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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 687

FRED CHANDLER, SR., *et al.*, *Petitioners*

v.

W. LEWIS DAVID, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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W. LEWIS DAVID, *et al.*

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Petitioners, Fred Chandler, Sr., *et al.*,[1] pray that a writ of certiorari issue to review the judgment of

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[1] The petitioners are: (a) Fred Chandler, Sr. and Fred Chandler, Jr.; and (b) Cecil E. Brown, A. H. Crawford, A. N. Easley, Vernon Fletcher, Woodrow Gum, J. R. Kenney, Jack H. Kenney, Paul Kenney, Walter S. Kenney, Hubert Kephart, Vernon McLaughlin, L. M. Stout, Jack D. Warner, and Vance Kenney.

The respondents are: W. Lewis David, as Texas State Director, Agricultural Stabilization and Commodity Service (A.S.C.S.), United States Department of Agriculture, Dee Wilson, Dick Guest and C. L. Bell, as Members of the Culberson County, Texas, A.S.C.S. Committee; Ralph T. Price, George O. Duncan, James E. Goad, James F. Moore, Weber Pool, and John E. Hutchinson, as Members of the Texas State A.S.C.S. Committee.

the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on July 28, 1965.

OPINION BELOW

The opinion of the court below (Appendix A, *infra*, pp. A1-17)[2] is, at present, unreported. The opinion of the District Court for the Western District of Texas (Appendix B, *infra*, pp. A21-78), upholding the unreported Findings of Fact and Determination of the Agricultural Stabilization and Commodity Service Review Committee (Appendix C, *infra*, pp. A79-97), is reported at 219 F. Supp. 801.

JURISDICTION

The judgment of the court below (Appendix A(1), *infra*, p. A19) was entered on July 28, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether farm owners engaged in the production of cotton, under valid and subsisting crop acreage allotments, are entitled to transfer such allotments, pursuant to 7 U.S.C. § 1378, to other farm land owned by them when the land to which such allotments were originally assigned is taken by eminent domain action of the Federal Government.

2. Whether the Secretary of Agriculture validly may, by administrative regulation (Amendment 11 to 7 C.F.R. § 719.12), impose conditions upon the transfer of cotton acreage allotments which prevent farmers from transferring such allotments from land con-

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[2] All of the appendices to this Petition are bound under a separate cover.

demned by the Federal Government to other land owned by them.

STATUTES AND REGULATIONS INVOLVED

The Federal statutes and regulations involved in this case are collected in Appendix D, *infra*, pp. A117-131.

Of focal concern are the following portions of the statute and regulation with which this case primarily is concerned:

7 U.S.C. § 1378(a)[3]

> Notwithstanding any other provision of this chapter, the allotment determined for any commodity for any land from which the owner is displaced because of the acquisition of the land for any purpose, other than for the continued production of alloted crops, by any Federal, State, or other agency having the right of eminent domain *shall* be placed in an allotment pool and *shall* be available only for use in providing allotments for other farms owned by the owner so displaced. Upon application to the county committee, within three years after the date of such displacement, * * * *any owner so displaced shall be entitled to have established for other farms owned by him* allotments which are comparable with the allotments determined for other farms in the same area * * * (emphasis supplied.)

Amendment 11[4]

> Upon written application * * *, the county committee shall determine whether the transaction by

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[3] Section 378, Agricultural Adjustment Act of 1938, Act of August 28, 1958, P.L. 85-836, Title V, Sec. 501, 72 Stat. 995 (Appendix D(1), *infra*, pp. A117-119).

[4] Amendment 11 to 7 C.F.R. § 719.12, February 16, 1961, 26 F.R. 1396 (Appendix D(2), *infra*, pp. A121-124).

which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself.
* * *

STATEMENT

A. The Statutory and Regulatory Program

This case concerns the administration of the Agricultural Adjustment Act of 1938, *supra,* note 3 (hereinafter referred to as the Act). The purposes and essential procedures of the Act are reviewed in the opinion of the District Court (Appendix B, *infra,* pp. A21-78).

The Act does not directly prohibit the transfer of an allotment apart from the land. However, the Act similarly does not authorize the transfer of acreage allotments, apart from the land, except in the following instances: (1) where, because of a natural disaster, cotton cannot be planted; and (2) where the land to which the allotment pertains has been condemned through governmental exercise of the power of eminent domain (7 U.S.C. § 1378). This case arises out of the Secretary's application of the latter exception.

The Act is silent with respect to a farmer's right to lease land to which an allotment pertains. However, the parties agree, and the court below concurred (Ap-

pendix A, *infra*, p. A8), that acreage allotments may be utilized by the lessee of the land to which they pertain.

The Secretary has been authorized by Congress to

> * * * make such regulations as are necessary relating to the selection and exercise of the functions of the respective [A.S.C.S.] committees, and to the administration, through such committees, of such programs. [16 U.S.C. § 590h(b)].

One "such program" is the Agricultural Adjustment Act of 1938, *supra*, note 3.

The Secretary has promulgated regulations comprehensively governing the administration of the cotton allotment and marketing quota provisions of the Act (See 7 C.F.R. Ch. VII). Petitioners challenge the validity of that portion of the Secretary's regulations which governs the transfer of cotton allotments from condemned land to other land owned by displaced cotton farmers (Amendment 11 to 7 C.F.R. § 719.12, Appendix D(2) *infra*, pp. A121-124 quoted in disputed part, *supra*, p. 3).

Pursuant to 7 C.F.R. § 719.12, when an allottee's land is condemned for a purpose other than continued farming, his allotment is reserved to him for a period of time. He may apply to his country A.S.C.S. committee for transfer of the allotment into an allotment "pool" wherein the allotment is reserved for a period of three years for transfer to another farm owned by him.[5] During the three-year period, the displaced

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[5] As originally promulgated, shortly following enactment of 7 U.S.C. § 1378, this regulation, like 7 U.S.C. § 1378 contained no substantive requirement other than the displaced farmer's ownership of the land to which the allotment is sought to be transferred. As amended by Amendment 11, the regulation imposed other substantive requirements, the latter being the subject of this case. 7 C.F.R. § 719.12 has been amended since the inception of this case and, as so amended, is now contained in 7 C.F.R. § 719.11.

farmer may apply to the county committee having jurisdiction over the land to which the allotment is sought to be transferred for a transfer of the allotment out of the pool to such land.

B. Statement of Facts

In 1958, the United States Department of Interior condemned certain land in Custer County, Oklahoma, including cotton farm land, owned by the displaced farmers and having acreage allotments and marketing quotas.[6] The displaced farmers transferred their allotments to the allotment pool.

In the Spring of 1960 Fred Chandler, Sr., a Culberson County, Texas cotton farmer, met with the petitioning displaced farmers. It became apparent that the Chandlers and the displaced farmers, respectively, held mutually dependent essential "ingredients" in a prospective cotton farming operation. The displaced farmers possessed the right to transfer cotton acreage allotments to other land which they might acquire but, at that time, they lacked ownership of such land. The Chandlers owned unimproved land suitable for cotton farming in conjunction with their established cotton farming operations, but lacked acreage allotments authorizing cotton production on such unimproved land.

In order to enable the displaced farmers and the Chandlers to realize the economic potential of their respective "ingredients" the Chandlers deeded to the displaced farmers, by duly recorded warranty deeds,

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[6] For convenient identification, the petitioners named *supra*, p. 1, footnote 1(b) hereinafter are referred to as "the displaced farmers."

sufficient land to support the transferrable acreage allotments, in consideration of the displaced farmers agreements, incorporated in the deeds, to assume an existing indebtedness on the land and to pay the Chandlers for the stated cost of clearing the land (R. 163, 186, 468; a typical deed is included in the Record at p. 549). The deeds contain no right of recision or reversion (R. 515-518).

Following execution of the deeds, the displaced farmers executed leases granting the Chandlers a 20-year leasehold interest in the land to enable the Chandlers to farm cotton on the land (R. 297; a typical lease is included in the record at p. 555).

The displaced farmers benefitted from the transaction, in that, each farmer would receive the stated rental for his newly acquired land and, at the end of the lease term, each would obtain possession of the land together with any fixtures and improvements added by the Chandlers (R. 288-299, 505-506).

Each displaced farmer applied to the Culberson County A.S.C.S. Committee (hereinafter referred to as the County Committee) for transfer of his pooled cotton allotments to the land purchased from the Chandlers (R. 557-559).

Beginning on February 17, 1961, following the displaced farmers' appearance before it, the County Committee approved the requested transfers and issued acreage allotments and marketing quotas to the Chandlers as lessee-operators of the involved lands (R. 560). The actions of the County Committee were reviewed and approved by the Texas State A.S.C.S. Committee. (A typical notice of approval is included in the Record at p. 560.)

Following approval of the transfers, the Chandlers produced and marketed a 1961 cotton crop on the lands, leased from the displaced farmers.

In the Summer of 1961, the United States Department of Agriculture commenced an investigation of all allotment transfers pursuant to 7 U.S.C. § 1378, including the transfers involved in this case.

On April 26, 1962, the A.S.C.S. Administrator directed the County Committee to cancel the allotments it had previously transferred at the request of the displaced farmers, advising the Committee that his investigation had disclosed certain unspecified "irregularities." On April 27, 1962, the County Committee, without any independent inquiry as to the merits, executed the Administrator's directive and retroactively cancelled the transferred allotments (R. 562, 566). Subsequently, over-production penalties were assessed against cotton produced by the Chandlers on land subject to the cancelled allotments (R. 48-49).

C. Proceedings Before the A.S.C.S. Review Committee

Pursuant to 7 U.S.C. § 1363, the petitioners perfected timely appeals to an A.S.C.S. Review Committee composed of three local farmers appointed by authority of the Secretary (R. 48).

On September 12-14, 1962, the appeals were heard by the Review Committee. On September 27, 1962, the Findings of Fact and Determinations of the Review Committee (Appendix E, *infra,* pp. A79-116) were entered, a majority of the Review Committee determining that the allotments had properly been cancelled.

D. Proceedings in the U.S. District Court, W.D. Texas

On August 23, 1962, while petitioners' appeals to the Review Committee were pending, but before the Review Committee had been designated, petitioners filed Civil Action 2438, seeking to enjoin the County Committee, *et al.*, from taking any action to enforce the assessed over-production penalties, and from withholding 1962 acreage allotments from the displaced farmers (R. 6-31). The court issued a temporary injunction enjoining the enforcement of penalties pending determination by the Review Committee.

On October 17, 1962, petitioners filed Civil Action 2451, seeking, in the alternative, to have the cancellation of the allotments by the A.S.C.S. Administrator declared illegal and beyond the jurisdiction of the Review Committee, or, in the alternative, to have the court review the determination of the Review Committee pursuant to 7 U.S.C. § 1365.

By order of the court, Civil Action 2451 and 2438 were consolidated into one Civil Action designated as Civil Action No. 2438.

On July 19, 1963, the District Court rendered its judgment and opinion upholding the jurisdiction and determination of the Review Committee (Appendix B, *infra*, pp. A21-78).

E. Proceedings in the Court Below

In briefs and oral argument before the court below, petitioners *inter alia* contended:

1. That the displaced farmers are entitled, pursuant to 7 U.S.C. § 1378, to transfer their allotments to any other farm land owned by them, and, by the undisputed facts of record, the displaced farmers are the

legal owners of the lands to which they sought to transfer their allotments; and

2. That, having complied with 7 U.S.C. § 1378, the displaced farmers are entitled to transfer their allotments, notwithstanding their compliance or lack of compliance with any variant substantive criteria sought to be superimposed upon the transfer of allotments by the Secretary since such action by the Secretary constitutes an illegal attempt to legislate.

The court below affirmed, upholding Amendment 11 as being consistent with the language and purpose of 7 U.S.C. § 1378 (Appendix A, *infra,* pp. A7-9). In substance, the court regarded Amendment 11 as a proper definition of the term "farm owned" (7 U.S.C. § 1378) based upon the court's conclusion that Congress, in using that term, intended to restrict the right to transfer allotments to displaced allottees who will reestablish farming operations and derive all benefit from the transfer. *Ibid.*

REASONS FOR GRANTING THE WRIT

The decision below leaves the displaced farmers holding title to cotton farm land upon which cotton may not legally be produced and voids their cotton allotments. The decision misconceives the legitimate economic interest of displaced allottees to transfer their allotments without requiring them personally to conduct cotton farming operations on the new land. The decision below warrants review not merely for these reasons but primarily because it, under the guise of upholding the intention underlying the statutory mandate to allow displaced allottees the economic benefit of transferring their allotments to other farms owned by them, has upheld an administrative regulation, pur-

suant to which the question of economic benefit to the displaced farmer is totally ignored solely because some other person shares the economic benefit derived from an allotment transfer.

The decision sought to be reviewed thus affects the right of a farmer producing cotton, corn, tobacco, wheat, rice or peanuts, necessarily pursuant to an allotment, to derive the same benefit from such allotment when his land is taken by eminent domain as he could derive from the allotment when attached to his original farm land.

In upholding the validity of Amendment 11, the court below properly determined that the purpose of Congress in enacting 7 U.S.C., § 1378, was to alleviate the hardship caused a farmer by loss of his land (Appendix A, *infra,* p. A8). However, the court was in error in adopting the respondents' view that the Congress intended that a displaced allottee's benefit under an "eminent domain allotment" must be less than the benefit which he enjoyed under his regular allotment prior to condemnation. The court below misconceived the purpose and effect of the transfers involved in this case, and being, perhaps, overzealous to protect the displaced farmers from loss of their allotments "by sale" to the Chandlers has, by upholding the cancellation of the allotments, totally removed all economic benefit of the allotments from the displaced farmers.

Under the Act, a farmer having an allotment assigned to his land is free to sell, lease or give away, *inter vivos* or by testament, such land ***together with its assigned allotments.*** His purpose in disposing of the land and allotment is not evaluated by the Depart-

ment, nor is the source of the transferee's title to the land evaluated by the Department. The transferee obtains the benefit of the allotment irrespective of whether he acquired title to the land by gift, or by payment of adequate or inadequate consideration.

Congress in enacting 7 U.S.C. § 1378 may be said to have permitted an exception to what is regarded by the court below as a "general ban against transfer of allotments apart from the land"—a ban not expressed in the Act (Appendix A, *infra,* p. A8). The exception simply permits a transplantation of an allotment, together with its privileges and obligations, to other farms owned by a displaced farmer. Neither the statute or its legislative history indicates any intention on the part of Congress to impose conditions or restrictions upon a farmer having an allotment transferred pursuant to 7 U.S.C. § 1378 beyond those imposed upon him during his enjoyment, prior to condemnation, of a regular allotment.

Amendment 11, as construed by the court below, requires cancellation of the displaced farmers' allotments because the Department reasonably believed that, contrary to the direct evidence of record, the displaced farmers were not required to pay the Chandlers the purchase price of the land (Appendix A, *infra,* pp. A14-17). Coupled with this determination is the court's conclusion that Amendment 11 requires vitiation of a displaced farmer's allotments if the transfer entails benefit to a person other than himself (Appendix A, *infra,* p. A8).

It is inescapable that as construed by the court below the holder of a transferred allotment no longer retains the full rights he possessed under the allotment prior to condemnation of his land. Under the

allotment, prior to condemnation, he would clearly have the right to give his land, with the allotment, to anyone of his choosing or lease his land, with the allotment to anyone of his choosing at a minimal or, indeed, free rental. Any disposition of his land to another, for an adequate or inadequate consideration, in fee simple or for a term of years, would be a permissible disposition of the allotment and would entail some benefit to another.

By upholding the right of the Secretary to impose these additional restrictions upon displaced allottees, the court below has acknowledged a power in the Secretary to detract from rights granted all farmers under allotment by Congress and, in this case, totally to deprive the displaced farmers of their allotments.

CONCLUSION

The decision below, if allowed to continue, permits the Secretary of Agriculture to detract from rights granted by Congress to farmers under allotment, to the direct economic detriment of any such farmer who sustains a loss of his land by virtue of governmental exercise of the power of eminent domain. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 21117

FRED CHANDLER, SR., ET AL., *Appellants*,

v.

W. LEWIS DAVID, ET AL., *Appellees*.

Appeal from the United States District Court for the Western District of Texas.

(July 28, 1965.)

Before GEWIN and BELL, Circuit Judges, and McRAE, District Judge.

GEWIN, Circuit Judge: This appeal raises difficult questions of administrative authority in the context of the Agricultural Adjustment Act's intricate statutory scheme for regulating the production of certain agricultural commodities. 7 U.S.C.A. §§ 1281-1393.[1] More specifically, it relates to the propriety of the administrative cancellation of certain cotton allotments that had previously been transferred from an Oklahoma eminent domain pool to land in Texas pursuant to section 378 of the Act, 7 U.S.C.A. § 1378.

As a general principle, the Act does not sanction the sale or transfer of commodity allotments apart from the

[1] We do not propose to outline in this opinion the regulatory scheme for the control of agricultural production embodied in the Act. The reader who is interested is referred to earlier opinions in this field. See Allen v. David, 5 Cir. 1964, 334 F.2d 592; Fulford v. Forman, 5 Cir. 1957, 245 F.2d 145; Morrow v. Clayton, 10 Cir., 1963, 326 F.2d 36.

land to which they are attached.[2] In 1958, Congress enacted section 378 to permit the transfer of agricultural commodity allotments which had been lost as a result of eminent domain proceedings to condemn the land for which they had originally been authorized. Pursuant to this section, when farm land is condemned under the power of eminent domain, the allotment is placed in a pool "and shall be available only for use in providing allotments for other farms owned by the owner so displaced." The following procedure is prescribed for a farmer who desires to obtain a transfer to other farm land:

> "Upon application to the county committee, within three years after the date of such displacement, or three years after the enactment of this section, whichever period is longer, any owner so displaced shall be entitled to have established for *other farms owned by him* allotments which are comparable with allotments determined for other farms in the same area. . ." (emphasis added)

On February 14, 1961, the Administrator of the Commodity Stabilization Service, pursuant to the general authority granted the Secretary to issue rules necessary to implement the Act,[3] promulgated Amendment 11 to 7 C.F.R. § 719.12. That regulation conditions the right of a displaced farmer to transfer an allotment on a showing that the acquisition of the new farm to which the allotment is sought to be transferred is "for the purpose of reestablishing farming operations" and is not a scheme for the purpose of obtaining the allotment for the benefit of

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[2] There are exceptions in addition to the one under consideration here. *E.g.*, 7 U.S.C.A. § 1344(m), relating to loss of allotments as a result of natural disasters.

[3] 7 U.S.C.A. § 1375(b) provides: "The Secretary shall prescribe such regulations as are necessary for the enforcement of this subchapter."

some other person.[4] The Administrator's stated purpose in promulgating the amendment was "to make the procedures for the transfer of allotment [sic] from the pool under 7 U.S.C. 1378 more effective in preventing the sale

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[4] The regulation, 7 C.F.R. § 719.12(d)(2), states in part:

"(2) Transfer of allotment from the pool. Upon written application by the displaced owner by August 29, 1961 or within three years after such owner is displaced, whichever is later, to the county committee of the county in which the farm which is to receive allotment from the pool is located, the county committee shall determine whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. *The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself.* Before an application is acted upon by the county committee the applicant shall personally appear before the county committee after a reasonable notice and bring with him all pertinent documents for examination by the committee and answer all pertinent questions bearing on the proposed transfer, unless the State committee determines from facts presented to it on behalf of the applicant that the applicant would be unduly inconvenienced by such an appearance on account of illness or other good cause and an appearance by the applicant before the county committee would serve no useful purpose. *If an allotment is transferred hereunder and it is later determined by the county committee that the transfer was obtained by misrepresentation by or on behalf of the applicant the allotment for the farm shall be reduced by the amount of the transfer for each year the transfer purportedly was in effect* and if the time for withdrawal from the pool has not expired the amount of the reduction shall be returned to the pool. The action of the county committee in approving or disapproving an application or in reducing the allotment for misrepresentation shall be effective only

of allotments from the pool or the transfer of allotments from the pool for the benefit of some person other than the displaced owner."

The Chandlers are cotton farmers who in 1960 owned certain large tracts of land in Culberson County, Texas, for which they had no cotton acreage allotments. Desirous of planting cotton on this land, the Chandlers went to Custer County, Oklahoma, where they arranged, through the services of certain employees of the County ASCS Committee, to meet local farmers who had cotton allotments in the eminent domain pool. As a result of their negotiations, the Chandlers gave to each of fifteen displaced farmers warranty deeds to enough of the land they owned in Culberson County, Texas, to support each farmer's available cotton allotments. The farmer in turn assumed an indebtedness of $35 per acre which the Chandlers owed to their grantors and agreed to pay the Chandlers clearing costs of $20 per acre. The land so transferred was then leased back to the Chandlers for a twenty-year term at a rental of $100 to $125 per acre.

The Oklahoma farmers, pursuant to section 378, applied to the Culberson County ASCS Committee for approval of the transfer of their allotments to the land which the Chandlers had deeded to them. They appeared before the

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upon approval of the State committee or its representative and the issuance of an appropriate allotment notice under the applicable commodity regulations. If the county committee determines that the transaction by which the displaced owner acquired the farm to which the allotment is to be transferred and the proposed transfer is for the bona fide purpose of reestablishing the farming operations of the displaced owner and is not a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner the county committee shall determine the allotment or increase of allotment to be transferred from the pool to such farm. . . ." (emphasis added)

committee on February 17 and April 22, 1961, either in person or by affidavit, and executed the required forms, including requested information as to the nature of the transactions by which they acquired the land to which transfer of the allotments was sought. Copies of the deeds and leases were made available for the County Committee's inspection. The farmers also executed Form CSS-178, which contained the following certification: "I have made no side agreement with any person for the purpose of obtaining an allotment from the pool for a person other than myself." All of the transfers were approved by both the County and State Committees, and the requisite allotment notices for 1961 were sent to the displaced farmers as owners and the Chandlers as operators. A crop of cotton was planted, harvested, and marketed by the Chandlers on the lands during both 1961 and 1962.

In the summer of 1961, the Department of Agriculture commenced an investigation of all allotments transferred from eminent domain pools. The Department found indications of irregularities in the transactions surrounding the transfer of the Oklahoma farmers' allotments and suggested that all the details of the transaction may not have been fully disclosed to the County Committee at the time the applications for transfer were made. Therefore, the Department of Agriculture requested the Chandlers to furnish information about the transfers on prescribed government forms entitled "Seller's Certificate of Bona Fide Sale of Land," as a prerequisite to a determination of the 1962 acreage allotment for the Culberson County lands. In this form the Chandlers certified that the displaced owners had made the initial payment for the farm to which the pooled acreage allotments had been transferred.

On April 26, 1962, after the Department had completed its investigation, a representative of the State ASCS office met with members of the County Committee and discussed

the Chandler transfers. The Committee subsequently entered the following notation in its minutes with respect to the acreage involved in those transfers:

> "At the direction of the Administrator, ASCS, revised farm allotment notices are being furnished the following farm operators and owners for the reason that investigation has disclosed irregularities in certification that no side agreements exist relating to the sale and lease back of the land involved. It has been concluded that failure to furnish all documents and side agreements (oral or written) was a misrepresentation of the facts when coupled with the applicants' certification on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant:"

On the following day, the County Committee issued formal notices retroactively cancelling the allotments in question. Overproduction penalties were later assessed for cotton marketed from the tracts in 1961 and 1962.

Pursuant to the provisions of 7 U.S.C.A. § 1363, timely appeals were perfected to a Review Committee composed of three local farmers appointed by the Secretary. Meanwhile, the Chandlers and the displaced farmers instituted a civil action in the district court against the Culberson County Committee, the State ASCS Director, and the State ASCS Committee, in which they sought to restrain the refusal to issue allotments for 1962 and to enjoin the collection of penalties for 1961 and 1962. This suit also challenged the jurisdiction of the Review Committee to hear the appeal, alleging that review was available only under section 10 of the Administrative Procedure Act, 5 U.S.C.A. § 1009. Before the merits of this suit could be considered, the Review Committee, one member dissenting, affirmed the cancellation of the transfers after a three-day hearing at which the Chandlers and two of the displaced Oklahoma

farmers testified. The Chandlers and the displaced farmers then instituted this suit in the district court pursuant to 7 U.S.C.A. §§ 1365-66 to obtain a review of the Review Committee's decision. The two federal court proceedings were consolidated, and in a lengthy opinion the district court held that the Review Committee had jurisdiction to hear the appeal, that Amendment 11 was a valid exercise of regulatory power by the Department of Agriculture, and that the findings of fact by the Review Committee were supported by substantial evidence. Accordingly, it affirmed the action of the Review Committee in all respects. *Kephart* v. *Wilson* (W.D. Tex. 1963) 219 F. Supp. 801.

The appellants make a frontal attack on the Department's authority to promulgate the standards set forth in Amendment 11 as guidelines for the County Committee's determination whether a farm is owned by the displaced farmer. They argue that section 378 gives the farmer whose land is condemned a right to have the allotment he loses transferred to any other land he owns, regardless of the purpose behind the transfer or the use to which the farmer intends to put the land. To be entitled to a transfer, all the farmer must show is that he (1) previously owned land for which an allotment had been issued; (2) had been displaced from that land by governmental action; (3) applied for an allotment transfer within three years of such displacement; and (4) owns the land to which the transfer is sought. According to the appellants, the regulation places impermissible limitations on this right of transfer by introducing the additional contingencies that the farmer must intend to re-establish farming operations on the land and that his purpose must not be to obtain an allotment for the benefit of another person. Appellants urge that the controlling statutory standard must be ownership alone and that in the instant case it was established beyond question that the displaced farmers obtained legal title to the land to which the allotments were transferred.

Section 1375 represents a broad grant of supplementary legislative authority to the Secretary and his delegates, and regulations implementing the Act will not be struck down unless "plainly and clearly inconsistent with the law." *Fowler* v. *Gage* (10 Cir. 1962) 301 F.2d 775, 778; see *Rigby* v. *Rasmussen* (10 Cir. 1962) 275 F.2d 861. We think Amendment 11, far from being inconsistent with section 378, is manifestly in line with its language and purpose. In the amendment the Secretary has merely attempted to define the meaning of a "farm owned" by the applicant for transfer as that phrase is used in the Act. The legislative history is clear that section 378 was drafted to alleviate the hardship to a farmer who loses his allotment through exercise of the power of eminent domain. Thus, the exception carved out in section 378 is a benefit only to the displaced farmer; it was not intended to be used as an instrument for obtaining allotments for other persons. Congress, in excepting allotments lost through condemnation from the general ban against transfer, did not intend to afford the farmer the privilege of selling the allotment itself. We think that by Amendment 11 the Department has merely made this congressional purpose explicit by defining the standard for transfer in terms of bona fide farm ownership for the purpose of re-establishing farming operations. *Morrow* v. *Clayton* (10 Cir. 1963) 326 F.2d 36.

Of course, as the Government concedes, this standard does not prevent a displaced farmer from leasing farm land to which a pooled acreage allotment has been transferred. This is a legitimate use of the land and the allotment. Whether such a transaction is permissible depends on an assessment of the bona fides of each particular case. As is often the situation, no clear-cut rule can be articulated. It follows that the County Committee, the Review Committee, and the district court applied the proper standard in assessing the transfers in question.

However, by upholding the substantive criteria of Amendment 11 we have vaulted only the first hurdle. The appellants challenge the authority of the Department to effect a retroactive cancellation of the allotments in question in the absence of an express congressional grant of such power. They rely largely on *CAB* v. *Delta Air Lines*, 367 U.S. 316, 6 L.Ed.2d 869 (1961); *United States* v. *Seatrain Lines, Inc.*, 329 U.S. 424, 91 L.Ed. 396 (1947); and *Pan American Petroleum Corp.* v. *Pierson* (10 Cir. 1961) 284 F.2d 649, *cert. denied*, 366 U.S. 936, in support of this contention. It is urged that the grant of an allotment gives the farmer something in the nature of a vested right and that, under the rationale of these cases, the agency cannot redetermine the right to transfer in the absence of express authorization from Congress. We do not agree.

It must be borne in mind that Amendment 11 permits a reconsideration of the approval of a transfer only in the relatively limited situation in which the transfer has been obtained by a misrepresentation as to the nature of the transaction by which the farmer acquired his new land. Its obvious purpose is to prevent a fraud on the Act which would frustrate its objective of benefiting the nation's farmers through control of production. We think the part of Amendment 11 permitting retroactive cancellation of allotments for misrepresentation is a valid exercise of administrative authority to "prescribe . . . regulations . . . necessary for the enforcement of this subchapter." 7 U.S.C.A. § 1375(b); see *Morrow* v. *Clayton, supra* at 45. It was certainly reasonable for the Secretary to conclude that a re-examination of such transfers was necessary to prevent a fraud on the Act and to safeguard its effective enforcement.[5]

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[5] We do not have in the instant case an attempt to apply a new agency policy retroactively as in *Seatrain Lines* or a failure to adhere strictly to statutory procedures for the modification of agency action in granting a license as in *Delta Air Lines*. Amend-

The appellants' objection to the cancellation extends as well, however, to the imposition of overproduction penalties, see 7 U.S.C.A. § 1346, as to the acreage of cotton planted on the land during the years the transfers were purportedly in effect. Amendment 11, if it constitutes a valid exercise of regulatory power, provides expressly that upon a determination that a transfer was obtained by a misrepresentation by or on behalf of the applicant, the amount of the allotment shall be reduced by the amount of the transfer for each year for which the transfer had been approved. This action would result automatically in

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ment 11 was in effect at the time all of the transfers in question were made by the Culberson County Committee, albeit it had only been published one day prior to the first group of appearances before the County Committee on February 17, 1961. The parties are presumed to know the provisions of the applicable regulations. Furthermore, the record indicates that the Department had advised its local functionaries to apply the standard of bona fide ownership prior to the promulgation of the amendment. That the displaced owners were apprised of these requirements is evidenced by the following excerpt from a letter sent to the farmers by the County Office Manager of the Hudspeth-Culberson County ASCS prior to their appearances:

> "We would like to make it clear to persons wishing to transfer acreage [sic] from the pool that the proposed purchase *is a bona fide purchase.* Discovery of side agreements will subject the person to criminal liability for false statements and cause the cancellation of any transferred pooled allotments to the farm together with its related history acreage." (emphasis added)

In addition, the allotment notices each contained the following admonition:

> "1. REVISION OF ALLOTMENT. This allotment is subject to such changes as may be necessary under the procedure for determination of allotments for the designated crop year, taking into account (1) any incorrect data or information used in establishing this allotment or (2) any change in the total land in the farm for such year from that shown on the reverse."

the imposition of penalties pursuant to § 346. We also regard this portion of Amendment 11 as a valid regulation. The purpose of the penalty provisions of the Act are "to deter farmers from planting and marketing more than their quotas." *Rodgers* v. *United States,* 332 U.S. 371, 374, 92 L.Ed. 3, 7 (1947). It is consistent with this basic purpose to utilize the penalty provisions as a means of discouraging schemes to sell allotments and thus pervert the objectives of the Act. We think the threat of overproduction penalties may serve as a deterrent here just as they do in discouraging overplanting. *Hasty* v. *Carter,* 106 Ga. App. 139, 123 S.E.2d 563 (1961), on which the appellants rely, is inapposite, for there no regulation authorized retroactive cancellation of allotments in the circumstances presented. We do not deem that case controlling.

Having upheld the validity of Amendment 11, we turn to the appellants' challenge to its application. It is urged that the Review Committee had no jurisdiction to adjudicate the validity of the transfers, since in the circumstances the only route of review is by way of an action in the district court under the Administrative Procedure Act, 5 U.S.C.A. § 1009. Under the latter section the district court rather than the Review Committee would be required to make the determination that the appellants had misrepresented their qualifications for a transfer of allotments.

Pursuant to the statutory scheme created by the Act, once the acreage allotments are apportioned among the counties of the state, the County Committee is given authority to distribute the acreage allotments to individual farms. 7 U.S.C.A. § 1344(f). Section 378 also gives to the County Committee primary authority to approve a transfer of allotments from an eminent domain pool. Amendment 11 supplements this power of the County Committee by providing that it may cancel transferred allotments

which it finds were obtained by misrepresentation. Section 363 provides that "any farmer who is dissatisfied with his farm marketing quota may . . . have such quota reviewed by a local review committee composed of three farmers from the same or nearby counties appointed by the Secretary." 7 U.S.C.A. § 1363. A farmer may obtain court review of an adverse decision of the review committee pursuant to 7 U.S.C.A. § 1365, and the court's determination is "limited to questions of law." The Review Committee's findings of fact are binding on the court "if supported by evidence." 7 U.S.C.A. § 1366. This remedy is exclusive in cases in which it is applicable. See, *e.g.*, *Allen* v. *David*, (5 Cir. 1964) 334 F.2d 592; *Weir* v. *United States* (8 Cir. 1962) 310 F.2d 149.

In the instant case, the appellants assert that this exclusive review mechanism is inapplicable because the County Committee, although required to make the initial determination whether a transfer was obtained by misrepresentation, did not in substance take any independent action to cancel the Chandlers' allotments. The minutes reveal, it is argued, that the County Committee merely served as a rubber stamp for the improper action of the State ASCS Administrator in cancelling the allotments and that it only issued the cancellation and penalty notices at his direction. They rely on *Morrow* v. *Clayton* (10 Cir. 1963) 326 F.2d 36 and *Fulford* v. *Forman* (5 Cir. 1957) 245 F.2d 145 for the proposition that the Review Committee has jurisdiction to review only the bona fide actions of the County Committee; it has no power to supervise the actions of the State Committee or the State ASCS Administrator.

We cannot take such a rigid approach to the review provisions of sections 363-66. Section 363 provides for an appeal to the Review Committee from adverse action with respect to an individual farmer's marketing quota. In further delineation of the Review Committee's jurisdic-

tion, 7 C.F.R. § 711.30(b) provides in part: "In all cases the review committee shall consider only such matters as, under the applicable provisions of the act and the regulations of the Secretary of Agriculture thereunder, are required or permitted to be considered by the county committee in the establishment of the quota sought to be reviewed." In the instant case, although it is perhaps arguable that the State Administrator improperly influenced the action taken by the Culberson County Committee,[6] that body in fact took formal action to cancel the appellants' allotments and assess penalties. Furthermore, authority to take this action was vested in the County Committee by the valid provisions of Amendment 11. The questions presented here are not comparable in scope and impact to those in *Fulford* v. *Forman, supra,* in which action of the state ASCS officials relating to the statewide policy of apportioning acreage allotments among various sections of the state was drawn into question. Instead, the present controversy relates to action which affects only the marketing quotas and acreage allotments of certain individual farmers. As such, it is a matter properly to be considered by the County Committee and reviewed by the Review Committee.

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[6] It may be that the State Administrator, as an ex officio member of the State Committee, 16 U.S.C.A. § 590h(b), did not exceed his authority in directing the cancellation of the Chandler transfers. Under the administrative structure the State Committee has general supervisory power over the actions of the various county committees. 7 C.F.R. § 7.20. Amendment 11 provides that "the action of the county committee. . . in reducing the allotment for misrepresentation shall be effective only upon approval of the State committee or its representative . . . ." Therefore, the failure of the County Committee to make a finding of misrepresentation may be subject to review and corrective action by the State Committee under its supervisory powers. If so, it can persuasively be argued that the State Committee was merely exercising this authority in directing the cancellations in the instant case. We do not answer this question, of course.

Indeed, we think our decision in the instant case is controlled directly by our earlier decision in *Allen* v. *David, supra.* There we were asked to review a county committee's cancellation of certain rice allotments prior to exhaustion of the administrative remedy provided by section 363. The action there was induced by the State Committee. We nevertheless held that the right of appeal to the Review Committee had to be exhausted prior to the institution of a proceeding to obtain court review of the agency's action, whether such action was induced, influenced, or instigated by state ASCS officials.

Morrow v. *Clayton, supra,* is distinguishable. There, the County Committee refused to take any action to cancel the allotments in question, and the State Administrator issued the revised allotment notices himself. In that case, there was no County Committee action which the Review Committee could consider. In addition, that opinion indicates that the cancellations involved may have been part of a statewide policy formulated by the state officials which the Tenth Circuit believed brought the case within the rationale of *Fulford* v. *Forman, supra.* No similar contention has been advanced here.

Assuming without deciding that the State Administrator unduly influenced the action of the County Committee and that the County Committee did not make an entirely independent determination that the Chandler transfers were obtained by misrepresentation as required by Amendment 11, the defect was cured by the *de novo* hearing before the Review Committee. As the district court correctly pointed out in its opinion, the facts surrounding the cancellation of the transfers were fully aired before the Review Committee, and, as a result, the Review Committee held a lengthy hearing in which it considered the question of misrepresentation *de novo.* We cannot see how any prejudice resulted to the appellants from this procedure. See *Graham* v. *Lawrimore* (4 Cir. 1961) 287 F.2d 207.

Accordingly, we hold the Review Committee, pursuant to 7 U.S.C.A. § 1363, and the district court, pursuant to 7 U.S.C.A. § 1365, properly exercised their jurisdiction to review the propriety of the cancellations in question.

The only remaining substantive issue is whether, applying the standards set forth in Amendment 11, the Review Committee could have concluded that the transfers were obtained through misrepresentation and that there was in effect at the time the applications for transfer were made a side agreement to obtain the allotments for the benefit of persons other than the displaced owners. The evidence introduced at the Review Committee hearing indicated that the transactions surrounding the transfers were less than genuine, particularly in light of the almost total indifference with which the displaced farmers viewed their purchases. For example, several deeds had to be corrected for misdescriptions and material errors, the farmers never saw the land they were purchasing until after the deeds and leases had been executed, they did not select the tracts they purchased, the farmers had no agreement with the prior lien holders to release the liens upon payment of that portion of the Chandlers' indebtedness to their grantors which the farmers assumed, there was no reservation of outstanding mineral rights in favor of the State of Texas, and the Chandlers, as *sellers,* paid earnest money to some of the displaced owners prior to their visit to Texas. The displaced farmers executed no note or other evidence of obligation to pay the purchase price, and initially they had no agreement in writing as to when the purchase price would be paid. Also, the Chandlers initiated the negotiations through employees of the Custer County ASCS office who were paid for their services by the allotment acre transferred,[7] and the

[7] Two employees were paid at the rate of $10.00 per acre for each allotment acre, or a total of $3530.00. After the investigation was commenced by the Department of Agriculture, these funds were returned to the Chandlers by the employees.

Chandlers handled all the paper work in connection with the sales and leases. The rent under the twenty-year leases was paid in full in the first two years. In addition, in 1962 the Chandlers represented to the County Committee in a "Seller's Certificate of Bona Fide Sale of Land" that the farmers had fully satisfied the first purchase installments without any financial aid from the Chandlers, although the latter had, in fact, made the payments to the lienors on behalf of four Oklahoma farmers without any corresponding deduction from the rental payment the Chandlers made to those farmers. From all of these circumstantial factors, the Review Committee concluded that an understanding that the Oklahoma farmers were not obligated to pay the purchase price for the tracts was in effect at the time of the applications and that the existence of this agreement was not revealed to the County Committee.[8] In addition, many of the factors evidencing the existence of this agreement were not revealed to the Committee. From all the above circumstances, the Review Committee concluded that the transactions were not for the purpose of the applicants' re-establishing farming operations, but were schemes to obtain allotments for the benefit of persons other than the displaced farmers. Admittedly, the Review Committee's determination was in direct conflict with the testimony of the displaced farmers and the Chandlers that no such agreement existed. Nevertheless, we think the in-

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[8]This conclusion is bolstered by the following from the findings of the Review Committee:

> "On April 25, 1962, Hubert Kephart and Fred Chandler, Sr., appeared before the Texas State ASC Committee and Kephart was asked the following question by Mr. Pool, a member of the State Committee: Question: 'Well, then, the deed that you got was it a clear title to it, do you have a clear title to it now—you wouldn't have to pay a dime if you didn't want to?' To which Kephart answered: 'Actually I would not. As far as I'm concerned I won't have to pay anybody a nickel for it because I do have a clear deed to it.'"

ference that a side agreement existed was permissible in these circumstances. Rarely can a misrepresentation be proved by overwhelming direct evidence, and it is necessary to resort to circumstances to prevent schemes which might destroy the effectiveness of the national agricultural program.

We therefore hold (1) that Amendment 11 as far as it applies to this case is a valid exercise of delegated authority; (2) the Review Committee had jurisdiction to review the cancellations in question; and (3) the Review Committee's finding that the transfers were obtained by misrepresentation as to the existence of a side agreement for the purpose of obtaining allotments for the benefit of persons other than the displaced owners is supported by substantial evidence. Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX A(1)

APPENDIX A(1)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21117

D. C. Docket No. 2451—Civil

FRED CHANDLER, SR., ET AL., *Appellants,*

v.

W. LEWIS DAVID, ET AL., *Appellees.*

Appeal from the United States District Court for the Western District of Texas.

Before GEWIN and BELL, Circuit Judges, and MCRAE, District Judge.

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

July 28, 1965.

Issued as Mandate: August 19, 1965.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

July 19, 1963

No. 2438—Civil

HUBERT KEPHART, ET AL., *Plaintiffs,*

v.

DEE WILSON, ET AL., *Defendants.*

Opinion

John D. Conner, Washington, D. C., and Maurice R. Bullock, Fort Stockton, Texas, for the Plaintiffs.

Howard Rooney, Washington, D. C., Attorney, Department of Agriculture; Ernest Morgan, United States District Attorney; and Frederick J. Morton, Assistant United States District Attorney, for the Defendants.

In this proceeding the plaintiffs have brought to this Court for review a determination made by a Review Committee acting under the provisions of the Agricultural Adjustment Act of 1938, as amended. The determination of the Review Committee had to do with the transfer to Culberson County, Texas, of cotton allotments which had pertained to certain tracts in Custer County, Oklahoma, which had been taken by the United States under eminent domain. In this proceeding the plaintiffs have also brought before the Court certain other matters and issues which will be discussed later.

Cotton allotment programs have been in effect since 1954 under Farm Referendums held under the provisions of Section 1343, Title 7, U.S.C.A. Under those programs the Secretary of Agriculture determines the national cotton

acreage allotment; that allotment is apportioned among the states; the allotment of each state is apportioned among its counties; and the county allotments are then apportioned among the cotton producing farms in the respective counties. Section 1344(a)(b)(e)(f), Title 7, U.S.C.A.

The administrative organization which has been provided for the administration of the cotton allotment programs and other farm programs is now known as the Agricultural Stabilization and Conservation Service, commonly referred to as ASCS. Under the administrative organization certain farm program matters are handled at the state level by a State ASCS Committee and at the county level by a County ASCS Committee. The members of the State ASCS Committee are appointed by the Secretary of Agriculture. The members of the County Committee are three in number and are elected by the producers in each county acting through county conventions.

In connection with the administration of the cotton allotment programs, the County Committees have had to do with the allotment of cotton acreage allotments to the cotton producing farms in their respective counties and the increasing or decreasing of those allotments. Section 1363, Title 7, U.S.C.A., provides, in substance, that any producer who is dissatisfied with the action taken in connection with his allotment may have such action reviewed by a Review Committee consisting of three farmers from the same or nearby counties appointed by the Secretary of Agriculture. Section 1365, Title 7, U.S.C.A., provides, in part:

> "If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States

district court * * * for the purpose of obtaining a review of such determination. * * *."

That Section further provides that upon being served with notice of the review the Review Committee shall file in the reviewing court a transcript of the record upon which the determination complained of was made together with its findings of fact.

It has been an integral part of the cotton allotment programs that, save where specifically authorized by law, a cotton allotment may not be sold or transferred except in connection with the sale or transfer of the farm to which it pertains. During World War II the United States condemned large tracts of land for military installations and since World War II the United States has condemned numerous tracts for military and other purposes. Many of the tracts condemned contained farms which had crop allotments. To deal with those situations the Congress in 1958 enacted what now appears as Section 1378, Title 7, U.S.C.A. That Section provides, in part:

"(a) Notwithstanding any other provision of this chapter, the allotment determined for any commodity for any land from which the owner is displaced because of acquisition of the land for any purpose * * * by any Federal, State, or other agency having the right of eminent domain shall be placed in an allotment pool and shall be available only for use in providing allotments for other farms owned by the owner so displaced. Upon application to the county committee, within three years after the date of such displacement, * * * any owner so displaced shall be entitled to have established for other farms owned by him allotments which are comparable with allotments determined for other farms in the same area * * * *."

Section 1388, Title 7, U.S.C.A., is a part of a chapter which relates to cotton allotment programs. It provides, in part:

> "(a) The provisions of sections 590h(b) and 590k of Title 16, relating to the utilization of State, county, local committees, * * * shall apply in the administration of this chapter. * * * *."

Section 590h(b) of Title 16 referred to provides for the organization of state, county and local committees. That Section further provides, in part:

> "* * * The Secretary [of Agriculture] shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs. * * * *."

The Secretary of Agriculture has promulgated extensive regulations relating to cotton allotment programs. They presently appear in 7 C.F.R. as Section 722.1 through Section 722.582 and are 178 pages in length.

Reference has heretofore been made to Section 1378, Title 7, U.S.C.A., under which cotton producers whose farms had been taken by eminent domain could secure transfer of the allotments pertaining to those farms to other farms acquired by them for the purpose of re-establishing their farming operations. Following the enactment of that statute, the Secretary of Agriculture implemented that statute from time to time by regulations. 7 C.F.R. 719.12. Under those regulations the application for the transfer of an allotment under the provisions of Section 1378 is to be made to the County ASCS Committee of the county in which the displaced owner proposed to reestablish his farming operations. That Committee is referred to as the receiving County Committee.

Starting in 1958 and ending in 1960 the United States condemned numerous tracts of land in Custer County, Oklahoma. Included among the tracts condemned were sixteen farms owned by fifteen owners. One of the displaced owners, J. R. Kenney, was the owner of two of the farms condemned. The applicants for this review consist of those fifteen owners, Fred Chandler, Sr., Fred Chandler, Jr., and the Chandler Company. The displaced owners are Cecil E. Brown, A. H. Crawford, A. N. Easley, Vernon Fletcher, Woodrow Gum, J. R. Kenney, Jack H. Kenney, Lewis E. Kenney, Paul Kenney, Walter S. Kenney, Hubert Kephart, Vernon McLaughlin, L. M. Stout, Jack V. [sic] Warner, and Vance Kenney. The transactions which are the subject matter of this proceeding were had between the fifteen owners and Fred Chandler, Sr., Fred Chandler, Jr., and the Chandler Company, a co-partnership composed of Fred Chandler, Sr., and Fred Chandler, Jr. They are residents of Texas. A Texas corporation, Capitan Company, which will be hereinafter referred to, was a family corporation of the Chandlers. For convenience, Fred Chandler, Sr., Fred Chandler, Jr., and the Chandler Company will be frequently referred to as the Chandlers. The defendants herein appeared throughout in those proceedings by an attorney for the Department of Agriculture, by the United States District Attorney for this District, and a member of his staff. It is clear that the resistance to the granting of the relief sought by the fifteen farmers and the Chandlers is being made by the Department of Agriculture. For convenience in reference, the contentions and claims made in behalf of the defendants herein will be referred to as being made by the Government.

A preliminary statement setting forth facts which are not in dispute will next be made. By a deed dated June 27, 1960, the Capitan Company acquired from Paul C. Teas, Jr., of Midland County, Texas, and his sister, Laura Sutherland, also referred to as L. S. Sutherland, of Dallas County, Texas, a tract of land in Culberson County, Texas,

containing approximately 3,000 acres. That tract included all of Sections 3 and 9 in the area described. The total purchase price was $450,000, of which $10,000 was paid in cash. The balance of the purchase price was evidenced by promissory notes. One note was for $10,000 payable September 1, 1960. Another note was for $15,000 payable December 1, 1960. Another note was for $415,000 payable in twenty annual installments due on December 1 of each year, the first installment of which was due on December 1, 1961, and the last installment of which was due on December 1, 1980. The notes bore interest at the rate of five and one-half per cent (5½%) per annum. The unpaid purchase price was secured by a deed of trust to the land conveyed. The conveyance was subject to the oil, gas and other mineral rights reserved to the State of Texas in the patents to the lands included in the tract.

By deed dated January 19, 1961, Fred Chandler, Sr., and Fred Chandler, Jr., acquired from Paul C. Teas of Dallas County, Texas, a tract of land in Culberson County, Texas, described as Survey No. 40, block 64, township 7. It is referred to in the record as being land in Section 40. The total purchase price was $22,274 of which $5,000 was paid in cash. The balance of the purchase price was evidenced by a note dated January 19, 1961, for $17,274 payable in ten equal annual installments. The note was secured by a deed of trust to the land conveyed. The deed of conveyance conveyed the surface of the land together with an undivided one-half participatory oil and gas royalty interest. The deeds to the tracts and the mortgages were recorded.

In November, 1960, the Chandlers entered into an unrecorded agreement with Paul C. Teas, Jr., and Laura Sutherland under which the note for $415,000 was surrendered and replaced by two notes, one for $35,000 and one for $380,000. The note for $35,000 was intended to reflect the unpaid purchase located in Section 9 and in

the east part of Section 3. Under the agreement upon the payment of $35,000 that part of the land would be released from the lien of the mortgage. Under the agreement the Chandlers were privileged to pay the full amount on December 1, 1961. Later the agreement was modified so as to permit the Chandlers to pay one-half of the $35,000 on December 1, 1961, and the balance on December 1, 1962, if they wished to do so. Some of the land purchased from Paul C. Teas, Jr., and Laura Sutherland was improved land which had certain cotton allotments, but a substantial portion of it was unimproved land which had no cotton allotments.

In the spring of 1960 Fred Chandler, Sr., learned that a number of farm owners owning land in Custer County, Oklahoma, had had their farms taken by the United States by eminent domain. He thereupon became interested in the possibility of having the cotton allotments of those farms transferred to Texas. In the summer of 1960 he went to Clinton, Custer County, Oklahoma, with the objective of working out arrangements under which the cotton allotments of the displaced farmers could be withdrawn from the Custer County cotton allotment pool and transferred to Culberson County, Texas. At Clinton he contacted Harry White, the Performance Supervisor in the Custer County ASCS Office, and Russel Dill, the County Office Manager in the same office. Prior to coming to Clinton Fred Chandler, Sr., had talked to Harry White over the telephone. Fred Chandler, Sr., made arrangements with Harry White and Russell Dill to render services for him for compensation. Fred Chandler, Sr., had oral negotiations with the fifteen displaced owners in regard to the matter of the transfer of their cotton allotments to Culberson County, Texas. Between January 25, 1961, and February 11, 1961, sixteen deeds were executed in favor of the fifteen displaced farm owners. The deeds described portions of the tracts in Culberson County, Texas, which had been earlier purchased from Paul C. Teas, Jr., and

Laura Sutherland. The grantees of those deeds then executed leases for the tracts described in the deeds in which Fred Chandler, Sr., was the lessee. The leases were all similar in form. They provided that the land described therein was leased for a lump sum to the lessee for a term of twenty years. The leases contained the following provisions:

> "Lessee shall pay to Lessor as cash rent for the entire term of this lease the sum of [amount different in each lease], and Lessee shall pay all taxes during the term of this lease.
>
> "It is further agreed by the parties hereto that upon the execution of this lease and contract, Lessee herein shall take possession of the land and premises herein described and shall farm the same during the period of this lease in a good and farmer-like manner and shall maintain all improvements thereon in a good state of repair, reasonable wear and tear excepted and upon the termination of said lease, shall surrender the property to Lessor.
>
> "• • •
>
> "It is further agreed and understood that Lessee herein shall have the right and may assign this lease without the consent of Lessor but that Lessee will remain liable to Lessor as hereinbefore set forth."

The only written evidence as to the transactions between Fred Chandler, Sr., and the displaced owners was contained in the leases and in the deeds. The deeds were warranty deeds and, save as to the grantor or grantors, the land described, and the amounts to be paid by the grantee, contained identical provisions. The deed to Woodrow Gum is typical. That deed, in part, was as follows:

"FRED CHANDLER, SR., ET AL.
TO
WOODROW GUM
} WARRANTY DEED

THE STATE OF TEXAS
COUNTY OF CULBERSON
} KNOW ALL MEN BY THESE PRESENTS:

That Fred Chandler, Sr., and Fred Chandler, Jr., of Fort Stockton, Pecos County, Texas, for and in consideration of the sum of Ten Dollars ($10.00) to us in hand paid by Woodrow Gum of Custer County, Oklahoma, the receipt of which is hereby acknowledged and confessed and in further consideration the said Woodrow Gum does hereby agree and does assume the payment of an indebtedness against the hereinafter described land and premises in the amount of ONE THOUSAND FIVE HUNDRED SEVENTY-FIVE DOLLARS ($1575.00) which said sum represents the purchase price of said land by the Grantors herein from Paul Teas, Jr., of Midland County, Texas, and the further sum of Nine Hundred Dollars ($900.00) being the cost of clearing said land, has granted, sold and conveyed and by these presents does grant, sell and convey unto the said Woodrow Gum of the County of Custer, State of Oklahoma, all that certain tract, lot or parcel of land described as follows, To-WIT:

[Description of forty-five acres]

• • • •."

The assumed indebtedness recited in each deed was equal to $35 an acre and the clearing cost recited was $20 an acre. In each case the acreage of the tract described in the deed contained sufficient land to support the transfer of the cotton allotment each of the displaced owners had in the county cotton allotment pool. The ratio was approximately three acres for each cotton allotment transferred.

It was orally agreed between the displaced owners and Fred Chandler, Sr., if he drilled wells on any of the tracts conveyed the owner would sell him the one acre of land on which the well was located for $75.

The displaced owners made applications for the transfer of their cotton allotments to the lands in Culberson County, Texas, described in the deeds referred to. On February 17, 1961, eight of the displaced owners appeared before the Culberson County ASCS Committee in support of their applications. Four of them appeared before that Committee on May 22, 1961, in support of their applications. J. R. Kenney appeared before that Committee on both February 17, 1961, and May 22, 1961. Three of them did not appear before that Committee but filed affidavits in support of their applications. The Culberson County Committee approved all of the applications. Commencing on February 17, 1961, and ending on July 13, 1961, the Texas State ASCS Office approved the actions of the Culberson County Committee in connection with the transfers. In 1961 the Chandler Company, a co-partnership composed of Fred Chandler, Sr., and Fred Chandler, Jr., planted and raised cotton the tracts purchased from Paul C. Teas, Jr., and Laura Sutherland to the extent of the cotton allotments attached to those tracts at the time of purchase and to the extent of the cotton allotments transferred from Oklahoma. During the 1961 crop year each of the tracts to which the Oklahoma allotments had been transferred bore its own cotton allotment ASCS number. In March, 1962, the Chandler Company had all of the tracts with cotton allotments reconstituted under one ASCS number.

During the summer of 1961 the Department of Agriculture started an investigation as to the transfers of cotton allotments here involved as well as to other cotton

allotment transfers. Upon direction of the Department of Agriculture, the Culberson County Committee requested the Chandler Company to furnish information as to the transfers on forms entitled "Seller's Certification of Bona Fide Sale of Land" as to the transfers here involved. Those certifications were completed by the Chandler Company and returned to the Culberson County Committee on February 27, 1962. Investigative activity on the part of the Department of Agriculture as to the transfers continued. On April 26, 1962, the Culberson County Committee held a meeting. A portion of the minutes of that meeting is next set forth:

"UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation

Extract of the minutes of the County ASC Committee for Culberson County, Texas held at Van Horn, Texas on the 26th day of April 1962.

1. Revised Farm Allotment Notices: At the direction of the Administrator ASCS, revised farm allotment notices are being furnished the following farm operators and owners for the reason that investigation has disclosed irregularities in certification that no side agreements exists [sic] relating to the sale and lease back of the land involved. It has been concluded that failure to furnish all documents and side agreements (oral or written) was a misrepresentation of the facts when coupled with the applicants certification on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant:

Farm No.	Farm Operator	Farm Owner	Revised 1961 Allotment
127	Chandler Company	J. R. Kenney	.0
128	Chandler Company	Vernon McLaughlin	.0
129	Chandler Company	Woodrow Gum	.0
130	Chandler Company	A. N. Easley	.0
131	Chandler Company	L. M. Stout	.0
132	Chandler Company	Cecil E. Brown	.0
133	Chandler Company	Jack D. Warner	.0
134	Chandler Company	Vernon Fletcher	.0
135	Chandler Company	A. H. Crawford	.0
136	Chandler Company	Hubert Kephart	.0
138	Chandler Company	Lewis Kenney	.0
139	Chandler Company	Jack Kenney	.0
140	Chandler Company	J. R. Kenney	.0
141	Chandler Company	Walter S. Kenney	.0
142	Chandler Company	Paul Kenney	.0
143	Chandler Company	Vance Kenney	.0"

On April 27, 1962, the Culberson County Committee executed and issued formal notices reducing the allotments in question to zero. Timely appeals were then taken to the Review Committee as to those notices. Later the Culberson County Committee issued notices of penalties in excess of $58,000 because of the cotton produced on and marketed from the tracts in question by the Chandlers during 1961. Timely appeals to the Review Committee were also taken as to those notices.

The reduction of the cotton allotments of the disputed tracts to zero by the Culberson County Committee left those tracts without cotton allotments for the 1962 cotton crop year. The Chandlers nevertheless produced cotton on those tracts in 1962. Penalty notices were issued to the Chandlers because of such production. While the appeals to the Review Committee as to the reduction of the cotton allotments to zero and the amount of penalties

as to the 1961 crop were pending, but before they had been heard and determined, the plaintiffs on August 22, 1962, commenced an action in this Court designated as Civil No. 2438. In that action the jurisdictional allegations were as follows:

> "1. The jurisdiction of this Court is invoked under the general equity powers of the Court, U.S.C. Title 28, Sections 1331 and 1337; the Declaratory Judgments Act, U.S.C. Title 28, Sections 2201 and 2202; and the Administrative Procedure Act, U.S.C. Title 5, Sections 1001, et seq. This action arises under Article V of the Amendments to the Constitution of the United States; the Agricultural Adjustment Act of 1938, as amended, U.S.C. Title 7, Sections 1281, et seq., and regulations promulgated by the Secretary of Agriculture pursuant thereto (7 C.F.R., Ch. VII); and the Agricultural Act of 1949, U.S.C. Title 7, Sections 1421, et seq., and regulations promulgated by the Secretary of Agriculture pursuant thereto (6 C.F.R., Ch. IV)."

The defendants to that action were the members of the Culberson County Committee, the State ASCS Director, and the members of the State ASCS Committee.

In their complaint the plaintiffs alleged that the Culberson County Committee, in reducing the cotton allotments to the disputed tracts to zero and in issuing the penalty notices in connection with the 1961 crop, had acted improperly. They alleged that the Culberson County Committee had also improperly refused to issue cotton allotments for the disputed tracts for 1962 and that penalty notices had been issued by that Committee for the 1962 crop on those tracts. The plaintiffs asked that the defendants be enjoined from taking any action to collect the penalties for the 1961 crop on the disputed tracts. They also asked that the defendants be restrained from refusing 1962 acreage allotments for the disputed tracts and from taking any action to collect the penalties for the 1962 crop.

On September 12-14, 1962, the appeals of the plaintiffs were heard by the Review Committee. On September 27, 1962, the findings of facts and determination of the Review Committee were entered. That Committee determined that the allotments in question were properly cancelled. On October 17, 1962, the plaintiffs filed another action in this Court designated as Civil No. 2451. The defendants to that action were the members of the Culberson County Committee and the members of the Review Committee. In that action the jurisdictional allegations were:

> "1. The jurisdiction of this Court is invoked under the general equity powers of the Court, U.S.C. Title 28, Sections 1331 and 1337; the Declaratory Judgments Act, U.S.C. Title 28, Sections 2201 and 2202; the Administrative Procedure Act, U.S.C. Title 5, Sections 1001, 1009; and the Agricultural Adjustment Act of 1938, as amended, Section 365, U.S.C. Title 7, Section 1365. The action arises under the Agricultural Adjustment Act of 1938, as amended, U.S.C. Title 7, Section 1281, et seq. and regulations promulgated by the Secretary of Agriculture thereunder, 7 C.F.R. Ch. VII."

The plaintiffs in their brief state that in Civil No. 2451 they sought in the alternative:

> "* * * (1) that this Court declare that the cancellation of the allotments and the subsequent imposition of the sanctions were illegal and that the review of this action was beyond the jurisdiction of the Review Committee; or, (2) that this Court review the determination of the Review Committee pursuant to Section 365 of the Agricultural Adjustment Act, set such determination aside and reinstate the allotments."

On October 17, 1962, the plaintiffs made an application for a preliminary injunction which was granted by the Court upon the furnishing of an injunction bond. The

requisite bond was furnished. Under the preliminary injunction the defendants were, in substance, restrained from taking any action in regard to collecting penalties for the 1961 and 1962 cotton crops upon the disputed tracts pending final determination. That preliminary injunction has been continued and is still in effect. By Court order the two actions were consolidated in this one action which is designated as Civil action No. 2438.

On appeal to the Review Committee all of the appellants challenged the action of the Culberson County Committee in reducing to zero the allotments to the tracts involved. On appeal to the Review Committee the Chandlers also challenged the correctness of the amount of the penalties fixed by the County Committee for the year of 1961. The Review Committee was composed of three members. The findings, conclusions and determinations of the Committee were concurred in by two members of the Committee. One member dissented. Both the majority and the minority filed extensive findings of fact. The findings, conclusions and determinations made by the majority of the Committee constitute the findings, conclusions and determinations of the Committee and will be referred to as such. The Committee held that the allotments in question were properly reduced to zero. It also held in accord with the contentions of the Chandlers that the penalties for the year 1961 had been incorrectly computed. The correctness of the computation is not involved in this proceeding.[1]

The plaintiffs herein, by the civil action designated as Civil Case No. 2451, have brought before this Court for review the findings, conclusions and determinations of the Review Committee as to the allotments in question. By that action and by Civil Case No. 2438 they have also

[1] The Chandlers gave notice of appeal from the penalty notices issued in connection with the 1962 crop. The Review Committee did not pass on those notices. Reference will be made later to that matter.

brought before the Court for consideration certain other contentions made by them. Those contentions are centered around a legal challenge relating to administrative procedure. That challenge presents legal questions which are determinable by this Court. That challenge will be later considered. The review phase of the present proceedings will be next considered.

There will first be considered the nature of the review by the Review Committee and by this Court. Section 1363, Title 7, U.S.C.A., provides that any farmer who is dissatisfied with his farm marketing quota may have such quota reviewed by a Review Committee. The hearing before the Review Committee is a *de novo* hearing. Graham v. Lawrimore (4th Cir. 1961), 287 F.2d 207; United States v. Stangland (7th Cir. 1957), 242 F.2d 843. The determination of the Review Committee is reviewable by a bill in equity filed in the proper court. Section 1365, Title 7, U.S.C.A. Section 1366, Title 7, U.S.C.A., provides, in part:

> "The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by *evidence* shall be conclusive. * * *." (Emphasis supplied.)

Section 1366 makes use of the word "evidence." The greater number of federal statutes relating to the findings of facts of administrative agencies make use of the term "substantial evidence." It is well settled that the word "evidence" used in a statute relating to findings of facts of administrative agencies means "substantial evidence." Universal Camera Corp. v. National Labor Relations Board (1951), 340 U.S. 474, 71 S. Ct. 456, 95 L. Ed. 456.

The United States Court of Appeals for the Fifth Circuit holds that "substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Continental Casualty Company v.

Holmes (1959), 266 F.2d 269, 276, certiorari denied (1959), 361 U.S. 877, 80 S. Ct. 140, 4 L. Ed. 2d 114. That Court cites in support of that definition the statement of Chief Justice Hughes in the case of Consolidated Edison Co. v. National Labor Relations Board (1938), 305 U.S. 197, 229, 59 S. Ct. 206, 83 L. Ed. 126.

In 73 C.J.S., Section 126, p. 447, it is stated:

> "In an adjudicatory proceeding before an administrative body it is for the administrative body to determine the weight and sufficiency of the evidence to draw inferences from the facts and to appraise conflicting and circumstantial evidence."

An administrative agency has the right to and should appraise the totality of the situation presented by the evidence. American Nat. Bank v. National Labor Relations Board (8th Cir. 1944), 144 F.2d 268, 270. In passing upon the question as to whether findings of facts by an administrative agency have a substantial basis, the reviewing court must take the entire record into consideration, including whatever in that record detracts from its weight. Universal Camera Corp. v. National Labor Relations Board, supra. The conclusive effect given to administrative findings of facts includes the inferences from the evidence if there is a substantial basis for such inferences. Carqueville v. Flemming (7th Cir. 1959), 263 F.2d 875, 877. Inferences drawn by an administrative agency which are supported by substantial circumstantial evidence have a substantial basis. American Nat. Bank v. National Labor Relations Board, supra. In a judicial review of the findings of facts of an administrative body where oral testimony had been presented before that body bearing upon the material facts, the fact that that body had the opportunity to observe the appearance and demeanor of the orally testifying witnesses is to be taken into consideration. Gamble-Skogmo, Inc. v. Federal Trade Commission (8th Cir. 1954), 211 F.2d 106, 113.

The hearing before the Review Committee was quite lengthy. Fred Chandler, Sr., Fred Chandler, Jr., and a number of the other plaintiffs testified orally before the Committee. There was also other oral testimony and numerous exhibits. Fred Chandler, Sr., testified at length and was cross-examined at length. The plaintiffs, among other witnesses, presented M. K. Woodward. He is a professor on the faculty of the School of Law of the University of Texas. His special fields are real property law, real property mortgage law, and oil and gas. He testified at length as to the various aspects of those fields of law in relation to the transactions in question. He also testified as to the practices and customs in those fields.

In the present case there is under review the findings of facts of the Review Committee. The federal courts and the state courts make use of the terminology of ultimate facts and basic facts. 2 Davis, Administrative Law Treatise, Section 16.06, p. 449. In the same Section, on page 451, the author states:

> "The basic findings are those on which the ultimate finding rests; the basic findings are more detailed than the ultimate finding but less detailed than a summary of the evidence. * * *."

In the case of Saginaw Broadcasting Co. v. Federal Communications Commission (C.A. D.C. 1938), 96 F.2d 554, certiorari denied sub nom. Gross v. Saginaw Broadcasting Co. (1938), 305 U.S. 613, 59 S. Ct. 72, 83 L. Ed. 391, the Court, in discussing the matter of findings of facts by administrative agencies, stated (p. 559):

> "* * * The process necessarily includes at least four parts: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts * * *

> are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion. * * *."

The record in the present case and the findings of the Review Committee show that it proceeded in the manner just outlined. That Committee made very complete findings as to the basic facts. From those facts and the inferences drawn therefrom the Committee made a finding as to the ultimate facts. Its finding as to certain ultimate facts contained in Finding of Fact No. 18 is of key importance. That finding is as follows:

> "The transactions by which the applicants obtained deeds to the farms in question were not for the purpose of reestablishing the farming operations of the applicants as displaced owners but were schemes and devices to sell the allotments and to transfer the allotments for the benefit of Fred Chandler, Sr., and Fred Chandler, Jr."

Prior to the time of the transfer of the allotments in question the Oklahoma cotton allottees and the members of the Culberson County Committee all knew and understood that it would be unlawful for a cotton allottee to transfer his cotton allotment, except to a tract of land he had purchased for the purpose of reestablishing his farming operations. Therefore, when each of the Oklahoma cotton allottees made application to transfer his cotton allotment to a tract of land in Texas, the application itself constituted a representation that the transfer sought to be made was for the purpose of reestablishing his farm operations on such tract and was not for the purpose of effecting a sale or transfer of the allotment for the benefit of the Chandlers. The Chandlers also knew and understood that it would be unlawful for the Oklahoma cotton allottees to sell or transfer their cotton allotments to them for their benefit. Fred Chandler, Sr., is a lawyer and a member of

the Texas Bar and had previously served on the Texas State ASC Committee.

The finding of the Review Committee above set forth was, in substance and effect, that the transfers in question were procured by fraud practiced on the Culberson County Committee and were void ab initio. The determination of the Review Committee was that the allotments in question were cancellable because of such fraud. That finding of the Review Committee is based upon inferences drawn by it from the basic facts which it found had been established by the evidence.

The parties are not in serious controversy as to the basic evidentiary facts as found by the Review Committee. They are in serious controversy as to the inferences apparently drawn by the Committee from certain of those facts and from the record as a whole. Certain facts found by the Review Committee, which are seemingly of pertinence, will next be considered.

It was heretofore noted that in the summer of 1960 Fred Chandler, Sr., entered into arrangements with Harvey White, the Performance Supervisor of the Custer County, Oklahoma, ASCS Office, and Russell Dill, the County Office Manager in the same office, to render services for him for compensation. Fred Chandler, Sr., testified that they were employed for the purpose of assisting them in meeting the Oklahoma farmers whose farms had been taken by eminent domain. He further testified in regard to their employment as follows:

> "My understanding as related to me by them, each of them, was that they had discussed the matter with their county ASC chairman * * * and he assured them that there was nothing wrong with it that he could see, so long as they didn't work in helping me to contact these men and to sell this land at any time during the hours of their employment with the committee."

He further testified that the services rendered by Harvey White and Russell Dill were rendered mornings before work and afternoons and evenings after work. Fred Chandler, Sr., testified that he had not made any specific agreement with them as to the amount of their compensation until after the transactions had been consummated but that after the transactions had been consummated he agreed to pay them ten dollars per basic cotton allotment acre for the sale of the land. On May 30, 1961, he paid Harvey White the sum of $1,765 and on June 15, 1961, he paid Russell Dill the sum of $1,765. The two payments amounted to ten dollars per acre for the basic cotton allotment acres. The allotment acres transferred amounted to 350.4 acres. The payments were not made until after the transfers had been approved by the Culberson County Committee. After an investigation was started in regard to the transactions, Harvey White and Russell Dill repaid the amounts received by them by checks payable to the Chandler Company. The Review Committee in its findings set forth in detail the transactions between the Chandlers and Harvey White and Russell Dill. It is clear that neither of them had any discretionary authority in connection with the transfer of cotton allotments. The plaintiffs contend that such being the case no unfavorable inferences could be properly drawn from the parts played by Harvey White and Russell Dill. The Government contends that the Review Committee could properly draw certain unfavorable inferences from the arrangements between the Chandlers and Harvey White and Russell Dill. The Government concedes that neither Harvey White nor Russell Dill had any discretionary authority in connection with the transfers. However, it contends that by virtue of their official positions their association with the Chandlers would, in the first instance at least, give the proposed arrangements an aura of legality and Governmental approval. The Government argues that the Chandlers, by making arrangements so that Harvey White

and Russell Dill had a stake in the transactions, necessarily restrained them from giving objective advice to the displaced owners. The plaintiffs in their brief and argument state as follows in connection with the matter of the employment of Messrs. White and Dill by Fred Chandler, Sr.:

> "Mr. Chandler testified that he had engaged the services of Messrs. White and Dill to assist him in locating displaced farmers in Custer County to whom he could present an offer to sell land in Culberson County, Texas. The Government's contention that Mr. Chandler engaged their services 'to render assistance in obtaining pooled cotton allotments' is wholly unfounded. The evidence indicates that neither Mr. White nor Mr. Dill, nor the County Committee for which they were employed had any power to effect the transfer of pooled allotments.
>
> "The record shows that the compensation received by Messrs. White and Dill was conditioned not upon the approved transfer of pooled allotments, but upon the number of acres of allotment in the pool to the credit of the displaced owners who purchased land from Mr. Chandler. Messrs. White and Dill were to perform their services for Mr. Chandler during time not committed to their employment with the Department of Agriculture. The record further shows that the Oklahoma farmers were not advised by Messrs. White and Dill regarding the transfer of their allotments, nor did they know of Messrs. White and Dill being employed by the Chandlers.
>
> "Whether or not Mr. Chandler's employment of Messrs. White and Dill was improper is not a question relevant to the cancellation of the allotments in dispute. * * *."

The Chandlers made what are referred to as earnest money payments to the Oklahoma allottees before leases

to the Texas tracts were executed and before the transfer of the allotments had been approved and before the allottees had seen the Texas land. On cross-examination Fred Chandler, Sr., testified in regard to that matter as follows:

> "Q. • • • you paid out the money, you paid out ten per cent of the lease money without ever having a lease, and you never required a single penney [sic] and downpayment on the land?
>
> "A. That's correct, we had faith in them and evidently they had faith in us."

Fred Chandler, Sr., then made reference to the matter of chances that have been taken. His cross-examination then continued as follows:

> "Q. What do you mean, there has been some chances taken?
>
> "A. I mean whether or not it would go through when we agreed to pay ten per cent down on this, and I mean other chances were taken. Whether we would go ahead and lease the land for what I think is a very substantial price, even though the allotment might terminate next year."

Fred Chandler, Sr., further testified on cross-examination that the ten per cent payment was in the form of earnest money and that if the deal did not go through the Oklahoma allottees could retain the earnest money. The Government contends the arrangement in regard to earnest money was most unusual in that normally it is the purchaser of land rather than the seller thereof who makes an earnest money payment and that, therefore, the earnest money arrangement tends to give an air of unreality to the entire situation. The plaintiffs contend that the arrangement does not do so.

Sometime during the period between January 26 and February 11, 1961, Fred Chandler, Sr., prepared the deeds

to the tracts in question. They were all prepared at the same time. He determined the shape and location of each of the tracts described in the deeds. The Oklahoma allottees accepted the deeds without being furnished abstracts of title to the tracts described therein and without title examinations. It was disclosed later that there were errors in seven of the deeds. The original deed to A. N. Easley was executed by Fred Chandler, Sr., and Fred Chandler, Jr., although title to the tract described in that deed was in the Capitan Company. Seven correction deeds were later executed. The larger tracts from which the tracts described in the deeds were carved out of had been conveyed to the Chandlers subject to the reservation of certain mineral rights. No reservations of mineral rights were made in the deeds to the Oklahoma allottees. The first time any of those allottees saw any of the land described in the deeds was at the time some of them came down to Texas for the hearing on the applications for transfer before the Culberson County Committee on February 17, 1961. The Chandlers paid part of the expenses of some of the Oklahoma allottees for their travel to Texas. Fred Chandler, Sr., caused the deeds to be recorded and paid the recording fees. The Government contends that all of the facts referred to strongly indicate complete indifference to and complete lack of concern on the part of the Oklahoma allottees as to the character, location, and the state of the title to the tracts allegedly purchased by them and that such being the case such inference, with other properly drawn inferences, would give support to the finding of the Review Committee that the transactions did not constitute bona fide purchases of the tracts by the Oklahoma allottees for the purpose of reestablishing their farming operations but, in reality, were a disguised sale of the cotton allotments for the benefit of the Chandlers. The plaintiffs contend that no such unfavorable inference should be drawn. They contend that the record shows that the Oklahoma allottees had complete confidence in Fred

Chandler, Sr., and they relied upon and trusted him to see that they received suitable tracts and proper title thereto. In regard to the fact that the deeds to the Oklahoma allottees did not make any reservations of mineral rights, the plaintiffs in their brief and argument stated that this feature was without relevance. They further stated as follows:

> "* * * The Oklahoma farmers and the Chandlers had no interest in the transfer of mineral rights. Their sole consideration was the transfer of land suitable for cotton farming. Mr. Chandler intended to convey all his interest in the lands in question, and the deeds he gave the Oklahoma farmers fulfilled this intention. However, Mr. Chandler's failure to specify this reservation, plaintiffs concede, constitutes a technical breach of his general warranty of title."

In each case the tract described in the deed was leased back to the Chandlers for a twenty-year period with the rent payable in a lump sum. Fred Chandler, Sr., testified that he would not have sold the tracts to the Oklahoma allottees unless they would lease them back to him. Thus, the leasing arrangements were an integral part of the transactions. The plaintiffs contend, and correctly so, that it is proper and lawful for an owner of land having a cotton allotment to lease such land and to have cotton produced thereon to the extent of the allotment by the lessee. The plaintiffs contend, and correctly so, that the Oklahoma allottees could properly and lawfully purchase land for the purpose of reestablishing their farm operations and carry on such reestablished farm operations by lease arrangements. The Government concedes that such is the case. However, it contends that the character, nature and terms of the leases in question and the circumstances surrounding them were such that the Review Committee could properly draw the inference that the leasings were, in reality, a part of the claimed disguise. Fred Chandler, Sr., testified that during the negotiations he proposed to lease

the tracts involved on the basis of $100 per cotton acre allotment, except in the case of Hubert Kephart who had a very large allotment. The basis in his case was to be $125 per cotton allotment acre. While each lease specified a lump sum payment for the twenty-year term, none of them specified when the lump sum was to be made. Fred Chandler, Sr., in his testimony before the Review Committee, was asked as to what the understanding was as to the payment of the lump sum rent. In that regard he testified as follows:

> "* * * When we settled down there and agreed on this lease, the terms and all, we had in mind, and I think I had conveyed it to them [the displaced owners] that we would pay it if they wanted it at the time the leases were executed, * * * one of them at a time, different ones spoke up * * * they decided they would much rather have their lease money, half of it in March of '61 and the other half in March of '62, but they had already received ten dollars per cotton allotment acre, that was earnest money, what I call it. Therefore, those who wanted their first half in March of '61 included that ten dollars, that which happened to be ten per cent. I believe, that they received. * * *"

Fred Chandler, Sr., further testified that L. M. Stout wished all of his rent then and that Vernon McLaughlin desired all of his in March, 1962, and that Hubert Kephart wished only a small part of his rent then. Thus, it appears that the Oklahoma allottees were entitled to be paid the lump sum rent payment at the time the leases were executed if they so desired. In the case of all of the Oklahoma allottees, except two, the lump sum rent payment was equal to $100 per acre for their cotton allotment acres. In the case of Vernon Fletcher the lump sum rent payment was equal to $103.26 per acre of his cotton allotment acres and in the case of Hubert Kephart the lump sum rent payment was equal to $125 per acre for his cotton allotment acres. Each lease provided that the lessee should pay the real estate taxes on the leased premises.

The Government contends that the situation as to the leases was such as to properly permit the Review Committee to draw unfavorable inferences as to the transactions. The Government stresses that under the arrangements the lump sum rent payment in each case was equal in amount to the amount agreed upon as the value of the allotments and that the allottees were entitled to that sum immediately upon the execution of the lease, or, in other words, the allottees were entitled to receive and did receive payment on a cotton allotment acre basis of the value per acre which was recognized by the parties as the value of such cotton allotment acres. The Government calls attention to the length of the leases, the feature of immediate lump sum payments for the entire twenty-year term, and the lease provisions making the payment of the real estate taxes the obligation of the lessee. The Government argues that the provision for the payment of the real estate taxes by the lessee would have the effect of protecting the lump sum payments against being cut into by the payment of future real estate taxes when the allottees would be receiving no current income from the tracts. The Government contends that all of the features of the leases referred to would properly permit the Review Committee to draw inferences which would support its conclusion as to the real nature of the transactions. The plaintiffs contend that none of the lease features referred to are unusual and presented evidence before the Review Committee to that effect. The plaintiffs further contend not any one or all of the lease features referred to would properly permit the Review Committee to draw unfavorable inferences as to the transactions.

It was heretofore noted that the Oklahoma allottees and Fred Chandler, Sr., had orally agreed that if he drilled any wells on any of the tracts the owner would sell him the acre of land on which the well was located. It appears that irrigation was necessary in order to grow cotton on the tracts in question and that irrigation would have to be

made by means of wells and irrigation ditches. Fred Chandler, Sr., testified, in substance, that it would be difficult for them to finance the drilling of the wells unless they owned the land around the well. He further testified that it would cost around $20,000 to drill a well and that the Chandlers had drilled four pretty good wells on three tracts.

The lands described in the deeds to the Oklahoma allottees were located in three different Sections: 90 acres in Section 3; 480 acres in Section 9; and 464.4 acres in Section 40. The tracts in Sections 3 and 9 were subject to a blanket overriding first lien in favor of Paul Teas, Jr., and L. S. Sutherland. That lien secured the sum of $35,000 payable in twenty annual installments with interest payable on December 1 of each year. It was first agreed between Paul Teas, Jr., L. S. Sutherland, and the Chandlers that the Chandlers were to have the privilege of paying the full amount secured by the lien on December 1, 1961. Later it was agreed between them that the Chandlers could pay one-half of the amount secured by the lien on December 1, 1961, and the other half on December 1, 1962, if they desired. The tracts in Section 40 were subject to a blanket overriding lien in favor of Paul Teas, Sr., securing the sum of $17,274 payable in ten annual installments with the interest payable on January 19 of each year. It was the testimony of the plaintiffs that the consideration for the tracts conveyed to the Oklahoma allottees was $55 per acre, which consideration was made up of the following items: the assumption by each of them to the amount of $35 for each acre conveyed of the overriding lien thereon and the payment by each of them to the Chandlers of $20 per acre for the clearing of the land conveyed. The feature of the Oklahoma allottees agreeing to pay a portion of blanket overriding liens was the subject of testimony at the hearing before the Review Committee. Fred Chandler, Sr., testified that he had no definite agreement with the lienholders and with the Oklahoma allottees that any of the allottees

could secure a release of his tract from the overriding lien by the payment of the $35 per acre assumed by him. The Review Committee found that the Oklahoma allottees had no agreement under which they could secure a release of their tracts from the blanket overriding liens by the payment of the $35 per acre specified in their deeds. The Government contends that the situation just referred to was of such a nature as to permit the Review Committee to properly draw an inference which, with other properly drawn inferences, would give support to the finding of the Review Committee as to the nature of the transactions. In connection with this matter the plaintiffs in their brief and argument state as follows:

> "There has been no agreement negotiated between the Oklahoma farmers and the prior lien holders for the release of the lien as to the individual Oklahoma farmer as his purchase price is paid. Mr. Chandler had secured from the prior lien holders, a partial segregation of the land purchased by the Oklahoma farmers from the total indebtedness owed by Mr. Chandler to them. However, release of the lien against the land purchased by the Oklahoma farmers cannot be obtained unless Mr. Chandler satisfies a part of the total secured indebtedness. Mr. Chandler has expressed full intention of doing this, and the Oklahoma farmers are satisfied with this arrangement. As Professor Woodward has observed, this is not a model conveyance, however, the parties are satisfied to rely upon their faith in each other and the absence of an agreement of this nature has no effect upon the passage of ownership from the Chandlers to the Oklahoma farmers."

The Government also calls attention to the fact that in the deeds which contained the assumption clauses no reference was made as to the matter of the installment payments or interest on the overriding liens and that no schedule of payment was set forth. It claims that an unfavorable inference could properly be drawn by the Review Commit-

tee because of that feature. In connection with this feature the plaintiffs in their brief and argument state:

> "Each of the plaintiffs assumed an obligation to pay a specified dollar amount of a pre-existing obligation of the Chandlers. The times of payment of the Chandlers' obligation were set forth in other instruments. When the plaintiffs assumed their obligation to pay a prescribed portion of these obligations, they assumed the obligation to make those payments when the Chandlers' obligations became due."

The plaintiffs contend that no unfavorable inference could properly be drawn from the feature referred to. The Review Committee found that in the summer of 1961, after the Department of Agriculture had started investigating the transactions, Fred Chandler, Sr., went to Custer County and met with most of the applicants and that he prepared and presented a schedule of payments to be made by them and that those scheduled payments were equal to one-tenth of the purchase price exclusive of clearing costs, plus interest, in the case of the tracts in Section 40 and one-half of the purchase price exclusive of clearing costs, plus interest, in the case of the tracts in Sections 3 and 9. The Department of Agriculture continued its investigation of the transactions. On December 1, 1961, an annual principal payment installment and interest was due on the overriding lien on the tracts in Sections 3 and 9 and on January 19, 1962, an annual principal payment installment and interest was due on the overriding lien on Section 40. The Review Committee made the findings hereinafter set forth in regard to those payments:

> "(a) On December 1, 1961, Chandler Company paid Paul Teas, Jr., and L. S. Sutherland $566.21 on behalf of Jack Kenney. Thereafter on March 1, 1962, Chandler Company paid Jack Kenney the balance of the lease money in the sum of $500.00 without deduction.
>
> "(b) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Paul Kenney. On March 13, 1962, Chandler Company

paid Paul Kenney $500.00 as a balance of the lease money without deduction.

"(c) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Vance Kenney and on either March 13, 1962 or August 13, 1962, paid Vance Kenney $500.00 as the balance of the lease money without deduction.

"(d) On December 1, 1961, Chandler Company paid $566.21 for L. M. Stout to Paul Teas, Jr., and L. S. Sutherland and has made no effort to collect from Stout.

"(e) On December 1, 1961, Cecil Brown paid Paul Teas, Jr., and L. S. Sutherland $566.21, and on November 29, 1961 was paid $635.00 by Chandler Company as the balance due on the rent.

"(f) On December 1, 1961, A. N. Easley paid Paul Teas, Jr., and L. S. Sutherland $1,698.64 and on November 29, 1961, A. N. Easley was paid $1,610.00 by Chandler Company as the balance due on the rent.

"(g) On December 1, 1961, A. H. Crawford paid Paul Teas, Jr., and L. S. Sutherland $1,132.42, and on November 29, 1961, A. H. Crawford was paid $1,150 by Chandler Company as the balance due on the rent.

"(h) On December 1, 1961, J. R. Kenney paid Paul Teas, Jr., and L. S. Sutherland $206.64 and on the same date J. R. Kenney paid Paul Teas, Jr., and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Campany paid J. R. Kenney a total of $2,845.00 the balance due on rent money.

"(i) On December 1, 1961, Vernon McLaughlin paid Paul Teas, Jr., and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Company paid Vernon McLaughlin $3,942.00 as balance due on rent money.

"(j) On December 1, 1961, Woodrow Gum paid Paul Teas, Sr., $232.42. On November 29, 1961, Chandler Company paid Woodrow Gum $755.00 balance due on rent money.

"(k) On December 1, 1961 • • • Jack D. Warner paid Paul Teas, Sr., $232.47. On November 29, 1961,

Chandler Company paid Jack Warner $840.00 balance due on rent payments.

"(l) On December 1, 1961, Vernon Fletcher paid Paul Teas, Sr., $232.47. On March 13, 1962, Vernon Fletcher was paid $787.50 by Chandler Company as balance due on rent payments.

"(m) On December 1, 1961, Hubert Kephart paid Paul Teas, Sr., $1,084.86. On March 13, 1962, Chandler Company paid Hubert Kephart $6,000.

"(n) On December 1, 1961, Lewis Kenney paid Paul Teas, Sr., $206.64. On March 13, 1962, Chandler Company paid Lewis Kenney $500.00 balance due on rent.

"(o) On December 1, 1961, Walter S. Kenney paid Paul Teas, Sr., $203.54. On March 13, 1962, Chandler Company paid Walter S. Kenney $500.00 balance due on rent."

At the hearing before the Review Committee the matter of the rent payments in relation to the payments made on the overriding liens was gone into. On recross-examination of Fred Chandler, Sr., the following appears:

"Q. Mr. Chandler, you had made the first [rent] payment in March of 1961, hadn't you?

"A. Yes, sir. Those who wanted it then, yes, sir.

"Q. And then this next payment was to be a year later in March of 1962?

"A. Yes, sir.

"Q. What is your explanation that they didn't have any arrangements to make this payment due in December 1, 1961?

"A. You mean those who didn't have?

"Q. Yes.

"A. Well, I'll tell you, that's a little hard to explain. To me—I'll just have to say what I think about it—it was kind of a feeling of indifference, lack of interest."

Earlier in his testimony Fred Chandler, Sr., testified, in effect, that the reason some of the Oklahoma allottees wanted part of the rent payment made in 1962 was because they had received substantial sums for their condemned lands and considered it desirable for income tax purposes to have part of the rent payments made in 1962.

It appears from the record that at the time the transactions were entered into some of the Oklahoma allottees had received their condemnation awards. However, some of the allottees litigated the amount of the proposed awards and the litigation had not been completed at that time.

The Government points out that the record indicates that the Oklahoma allottees apparently did not make use of the proceeds received by them for their condemned land towards the purchase price of lands allegedly purchased by them for the purpose of reestablishing their farming operations and that the payments made on the purchase price of those tracts were made as heretofore set forth.

The Government in its brief makes the following argument:

> "• • • The purchasers for the most part had received $50 per allotment acre and were to receive $50 more by March 15, 1962. However, before making any payment Jack Warner, Woodrow Gum, A. N. Easley, Cecil Brown and A. H. Crawford required Chandler Company to pay in advance the rent payment due March 15, 1962. These people had received a rent payment in the spring of 1961 but apparently had given no consideration to making a payment on the purchase price on December 1, 1961. • • •."

The Government makes the following reference to the payments on behalf of L. M. Stout, Jack Kenney, Paul Kenney, and Vance Kenney:

> "• • • L. M. Stout made no payment out of his own funds. He had received all of the rent money and yet Chandler and Company advanced the money and have

made no effort to collect from him. Jack Kenny, [sic] Paul Kenny, [sic] and Vance Kenny [sic] made no payment from their own funds. The payments were advanced by Chandler and Company and yet Chandler and Company on March 1, 1962 paid Jack Kenny [sic] $500 without deduction for the advance, paid Paul Kenny [sic] $500 on March 13, 1962 without deduction for the advance, and on March 13, 1962 paid Vance Kenny [sic] $500 without deduction for the advance. * * *"

The Government contends that the payments were made because the continuing investigation of the transactions by the Department of Agriculture rendered it necessary that a showing be made that the Oklahoma allottees were making payments on the purchase price on the tracts allegedly purchased by them. The Government contends that the surrounding circumstances relating to the matter of the payments of the purchase prices were such as to indicate an indifference and lack of concern on the part of the allottees as to the payment of the purchase price and that the Review Committee could properly draw inferences therefrom which, with other properly drawn inferences, would give strength to their conclusion that the allottees regarded the transactions as being transactions for the sale or transfer of their cotton allotments for the benefit of the Chandlers rather than the purchase of tracts for the purpose of reestablishing their farming operations thereon. It is the claim of the plaintiffs that the payments made on the overriding liens were made pursuant to bona fide and valid agreements. They contend that no unfavorable inference or inferences could be properly drawn by the Review Committee from the situation disclosed by the record as to those payments.

The deeds accepted by the Oklahoma allottees provided that they should pay the sum of $20 per acre for the cost of clearing the land conveyed to them. The Review Committee found that "* * * there is not now any agreement as to when and how the $20.00 per acre clearing costs are to be paid." Fred Chandler, Sr., testified on cross-exami-

nation before the Review Committee that the clearing costs were to be paid at some later date. It appears that the Hubert Kephart tract had been cleared at the time the deed was delivered to him. It further appears that all of the tracts in question had been cleared at the time of the hearing before the Review Committee. It further appears that no request for payment for the clearing costs has been made. Fred Chandler, Sr., testified before the Review Committee that payment had not been requested from the Oklahoma farmers for clearing costs because the transactions had all been questioned by the Department of Agriculture. The Government claims that the record indicates that the clearing had been completed on the Hubert Kephart tract prior to any investigation by the Department of Agriculture, yet no request for payment of the clearing costs was made upon him. The Government further claims that the record indicates that although the clearing of other tracts had been completed before the Chandlers had completed all of their rent payments the Chandlers did not deduct the clearing costs from those rent payments.

The Government contends that the record indicates a lack of concern and indifference by the parties as to the payment of the clearing costs. It further contends that from such lack of concern and indifference the Review Committee could properly draw an unfavorable inference as to the bona fides of the transactions. The plaintiffs contend that the record shows that the Oklahoma farmers had entered bona fide and valid agreements to pay for the clearing costs and that the actions of the parties in relation thereto have reasonable explanations.

In the case of McGovern v. City of New York (1923), 234 N.Y. 377, 138 N.E. 26, in an opinion by Judge Cardozo, it is stated (p. 32 N.E.):

> "* * * The underlying realities of plan and purpose and effect must prevail over the form or the disguise which may incumber or belie them. * * *."

The finding of the Review Committee heretofore referred to was, in substance, to the effect that the underlying realities of plan and purpose were to sell the cotton allotments in question for the benefit of the Chandlers and that such plan and purpose was effected under the guise of conveyances and leases back.

The Oklahoma allottees secured deeds to particular tracts which were placed of record. Thus, each of them was the holder of record title to the land described in the deed running to him. If, as the Review Committee found, the transactions were guises for the sale of cotton allotments rather than purchases of land, it is obvious that it would be necessary at some time in the future that record title to the tracts be in the Chandlers or their nominees. Each deed specified certain obligations on the part of the grantee as to the purchase price. Professor Woodward, who, as heretofore noted, was a witness for the plaintiffs, testified that under the Texas law the ownership to each of such tracts was vested in the grantee of the deed. He further testified that under the Texas law the Chandlers had an implied vendors' lien on each tract as security for the performance by the grantee thereof of the obligations to be performed by him for their benefit. He further testified that in the event that any grantee failed to perform any of those obligations the Chandlers could foreclose their vendors' lien on the particular tract, in which event the tract would be sold on foreclosure sale. The Government argues that the Chandlers could reacquire record title to a particular tract in two ways. The grantee of a particular tract could, in effect, abandon his record ownership by not fulfilling his obligations as to the purchase and allow the Chandlers to reacquire record title by means of foreclosure of their vendors' lien, or at some future time such grantee could execute a quit claim or other form of deed to the tract in favor of the Chandlers. Fred Chandler, Sr., and the Oklahoma allottees testified before the Review Committee that they had not entered into any agreement or under-

standing whereby ownership of the tracts in question was to be revested in the Chandlers.

The Review Committee made extensive findings as to the facts and circumstances surrounding the transactions. It then made Finding No. 17 which is as follows:

> Based on the facts and circumstances set forth above, the Committee finds that at the time the applicants made application to the Culberson County Committee to transfer the cotton allotments from the eminent domain pool the applicants and the Chandlers had an understanding to the effect that the applicants were not obligated to pay for the land covered by the deeds in question and were privileged to retain the money ostensibly paid under the leases and that the Chandlers would keep up the required payments on the first liens. * * *."

The plaintiffs vigorously assert that such finding does not have substantial evidentiary support. They contend, and correctly so, that there is no direct evidence in the record as to any agreement or understanding between the parties that the transactions were to be otherwise than as appeared from the deeds and leases. They contend that the facts and circumstances were not such as to provide substantial evidentiary support for the finding of the Review Committee that the transactions were otherwise than as appeared from the deeds and leases. They point out that they presented evidence to the effect that each feature of the transactions from which the Review Committee apparently drew unfavorable inferences was either a usual feature of real estate transactions or was not so unusual as to give adequate support to any unfavorable inferences. In the case of Schlitz Brewing Co. v. Houston Ice Co. (1919), 250 U.S. 28. 39 S. Ct. 401, 63 L. Ed. 822, the Court stated (p. 29 U.S.): "It is a fallacy to break the fagot stick by stick." It was the duty of the Review Committee to consider the totality of the circumstances as shown by all of the evidence. In that connection it was

entitled to take approaches to the evidence similar to those taken by the courts. In the case of Minnesota Tea Co. v. Helvering (1938), 302 U.S. 609, 58 S. Ct. 393, 82 L. Ed. 474, the Court stated (p. 613 U.S.): "A given result at the end of a straight path is not made a different result because reached by following a devious path."

The findings of the Committee were, in effect, that a fraud had been committed upon an agency of the United States. In the case of Merchants' Nat. Bank v. Greenwood (1899), 16 Mont. 395, 41 P. 250, the Court stated (p. 259 P.):

> "* * * Fraud cannot often be proved by direct evidence. Fraud conceals itself. It does not move upon the surface in straight lines. It goes in devious ways. * * * It is rarely that we can lay our hand upon it in its going. We are more likely to discover it at its destination, before we know that it has started upon its sinuous course. * * *."

The Review Committee, in effect, found that the destined end of the transactions was the sale of cotton allotments and not the purchase of lands. If such were the case then it would not be necessary for the Review Committee to specify the devious way or ways the parties may have had in mind to get the record titles to the tracts involved back to the Chandlers or their nominees.

It is the holding of the Court that the findings of fact made by the Review Committee as to the real nature of the transactions are supported by substantial evidence. However, that holding is not determinative as to the present litigation. The plaintiffs have raised other issues. Those issues have to do with the matter of the jurisdiction of the Review Committee and certain matters relating to administrative procedure.

One of the issues as to administrative procedure raised by the plaintiffs is related to a certain regulation. Prior to February 14, 1961, the Secretary of Agriculture had promulgated some brief regulations relating to the transfer of allotments where the land to which they had pertained

had been taken by eminent domain proceedings. On February 14, 1961, the Secretary promulgated a lengthy regulation relating to such transfers, which was Amendment 11 to the Farm Allotment Regulations. 26 F.R. 1396. It was published in the Federal Register on February 17, 1962. That regulation now appears as part of Section 719.12 of the Code of Federal Regulations, Title 12. It provides, in part:

> "Upon written application by the displaced owner by August 29, 1961 or within three years after such owner is displaced, whichever is later, to the county committee of the county in which the farm which is to receive allotment from the pool is located, the county committee shall determine whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself. * * * If an allotment is transferred hereunder and it is later determined by the county committee that the transfer was obtained by misrepresentation by or on behalf of the applicant the allotment for the farm shall be reduced by the amount of the transfer for each year the transfer purportedly was in effect * * *. If the county committee determines that the transaction by which the displaced owner acquired the farm to which the allotment is to be transferred and the proposed transfer is for the bona fide purpose of reestablishing the farming operations of the displaced owner and is not a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner the county committee shall determine the allotment or increase of allotment to be transferred from the pool to such farm. * * *."

The Oklahoma applicants appeared before the Culberson County Committee in connection with the transfer of their allotments on February 17, 1961, and May 22, 1961. It appears that the provisions of the regulation relating to "side agreement" or to "scheme or device" were not called to their attention at the time they appeared before the Culberson County Committee nor was inquiry made of them by the members of that Committee as to those matters. The plaintiffs assert that the provisions of the regulation were vague and indefinite in that they did not define ownership nor contain indicia of ownership in connection with the land to which the allotments were to be transferred. They also assert that the provisions of the regulation were vague and indefinite in that they did not define the words "side agreement" nor the words "scheme or device." The substance of the contention of the plaintiffs in this connection is that the allotments in question were improperly cancelled because the regulation in question was not made known to the Oklahoma allottees at the time their applications for transfer were before the Culberson County Committee and because the regulation in question was so vague and indefinite as to deny them due administrative process.

It seems clear that the propriety of the transfers in question has a sweep which is broader than that of the particular regulation. As heretofore noted, the substance of the findings of the Review Committee and the effect of its determination was that the Oklahoma applicants made applications to the Culberson County Committee for the transfers to tracts in Culberson County, which applications on their face purported to be based upon bona fide purchases of the tracts for the purpose of reestablishing their farming operations thereon but that in truth and fact they were not so based but were made in furtherance of a scheme or device which had for its objective the sale and transfer of the allotments for the benefit of the Chandlers. The Oklahoma allottees had no need of a regulation or regula-

tions either informing them or specifying that such type of transfers was unlawful. They already knew that. The Review Committee found that the transfers in question were procured by fraud. In the case of Massey-Ferguson, Inc. v. Bent Equipment Company (1960), 283 F. 2d 12, the United States Court of Appeals for the Fifth circuit stated (p. 15):

> "What we said in White v. Union Producing Co., 1944, 140 F. 2d 176, 178, is persuasive here: 'Fraud vitiates everything it touches. It is difficult to define; there is no absolute rule as to what facts constituted fraud; and the law does not provide one "lest knavish ingenuity may avoid it."' Much the same idea was expressed in our decision of Abbott v. United States, 1956, 239 F. 2d 310, 314, where, quoting from one of our earlier cases and citing several others from various courts, we said: '* * * the law does not define fraud; it needs no definition; it is as old as falsehood and as versable as human ingenuity.'"

Where the Government seeks to rescind the action of one of its agencies because of the claimed failure of the agency or the beneficiary of the agency's action to observe and follow certain pertinent regulations, and the only basis for the rescission is the regulations themselves, their rescission can only be had within the bounds of those regulations. However, it is clear that where a certain action on the part of an agency was induced by fraud practiced upon it, the right of the Government to bring about a rescission of that action is not dependent upon the existence of a regulation forbidding such fraud or specifying what acts shall constitute fraud or defining fraud.

It seems clear that the allotments in question could be properly cancelled without fitting the cancellations into the phraseology of the regulation. It appears from the minutes of the Culberson County Committee that use was made of some of the words appearing in the regulation. It also appears that the Review Committee made use of the words

"side agreement" appearing in the regulation. It also appears that the Review Committee made use of the words "scheme" and "device" which appear in the regulation. However, the essence of the findings of the Review Committee was that the transfers in question had been procured by fraud. Further, the words "scheme" and "device" used in the regulation have connotations similar to that of the word fraud and, like that word, would seem to require no definition.

The conduct of the parties as established by the Review Committee was conduct which was prohibited apart from any regulation or regulations. The Court holds that administrative procedure challenge of the plaintiffs based upon the regulation in question is not well taken.

The plaintiffs make two closely connected contentions based upon a recital in the minutes of the Culberson County Committee held on April 26, 1962. Those minutes contain the following recital: "At the direction of the Administrator ASCS, revised farm allotment notices are being furnished the following farm operators and owners * * *." Thereafter in the minutes there is listed the farms in question with their 1961 allotments revised to zero. The plaintiffs contend that the action reflected in the minutes was that of the State Administrator ASCS and not that of the County Committee. Based on that premise, the plaintiffs make the contention that since the Review Committee can only review actions of county committees there was in the present case no action of the County Committee for it to review and hence the action in regard to the allotments reflected in the minutes referred to was not within the review jurisdiction of the Review Committee. The challenge to the jurisdiction of the Review Committee was raised before the Review Committee but was not specifically ruled on by it. However, the Review Committee assumed jurisdiction and thus impliedly held that the review was within its jurisdiction.

Based upon the premise that the action reflected in the minutes referred to constituted cancellation of the allotments in question by the State Administrator ASCS and constituted an administrative cancellation made by such Administrator acting under authority designated to him by the Secretary of Agriculture, the plaintiffs make a further contention. In that connection they assert that neither the Secretary of Agriculture nor the State Administrator ASCS acting for him had lawful authority to cancel the allotments in question. In the same connection they also assert that if it be assumed that originally the Secretary of Agriculture was vested with authority to cancel cotton allotments which had been improperly issued, such authority could no longer be exercised by him at the time in question. They point out that the Secretary of Agriculture had, by regulations, set up administrative procedures for the issuance, transfer and cancellation of allotments under which those matters, in the first instance, were to be handled by the county committees. They contend that the Secretary of Agriculture, having set up such administrative procedures, could not thereafter lawfully by-pass them. They contend that what occurred in this case was the bypassing by the Secretary of Agriculture of his own regulations. Their contentions require that consideration be given to certain related matters.

Congress made the Secretary of Agriculture responsible under the law for activities within his Department. He is accountable to the President, to Congress, and to the public for the proper administration of the different farm programs. Frauds in connection with those programs would tend to defeat their objectives. The Secretary of Agriculture and those acting for him have the duty and responsibility to protect those programs against frauds. It is clear that when the Secretary has reasonable grounds for believing that a fraud has been committed in connection with a farm program, it is his duty and responsibility to either take proper action in relation thereto himself or to cause

the matter to be brought before a proper administrative agency or proper court for a determination.

There are numerous instances in which it has been charged that a party has induced action on the part of a Department or other agency of the United States to which he was not lawfully entitled. In some cases it has been charged that the action in question was induced by fraud. In other cases it has been charged that the action in question was improper because it was taken in disregard of applicable statutes and regulations. Where the action has resulted in a transaction in which redress can be effected by its rescission several procedures have been used to effect such rescission. In some cases the United States has brought a plenary action to rescind or cancel the transaction or transactions. Typical of such cases is the so-called Teapot Dome case. Pan American Co. v. United States (1927), 273 U.S. 456, 47 S.Ct. 416, 71 L.Ed. 734. In other cases a Department head has administratively rescinded or cancelled the transaction. Typical of such cases is the case of Boesche v. Udall (1963), U.S. , 83 S.Ct. 1373, L.Ed.2d . In that case there was involved a mineral lease of public land which had been cancelled administratively by the Secretary of Interior on the ground that the lease was invalid in its inception. The Court stated (p. 1376 S.Ct.):

> "We think that the Secretary, under his general powers of management over the public lands, had authority to cancel this lease administratively for invalidity at its inception, unless such authority was withdrawn by the Mineral Leasing Act. * * *."

The Court held that such authority had not been withdrawn by that Act and sustained the cancellation.

It is well settled that a Department or agency of the United States is required to follow the procedure provided by its own regulations even though it had authority to

provide for such procedure by regulation. Service v. Dulles (1957), 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 403; Vitarelli v. Seaton (1959), 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012; Accardi v. Shaughnessy (1954), 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681. In the case of Service v. Dulles, supra, there was involved the validity of the discharge of a Foreign Service Officer by the Secretary of State. Congress, by what was referred to as the McCarran Rider, had given the Secretary of State absolute discretion in the matter of the discharge of Foreign Service Officers. The Secretary of State had promulgated regulations relating to the procedure in connection with the discharge of such Officers. The Secretary of State discharged the plaintiff Service without following the provisions of the regulations. The Court held that the plaintiff Service had been improperly discharged. It stated that while under the McCarran Rider he could have discharged the plaintiff Service in his discretion, yet as long as the regulations remained unchanged he could not proceed without regard to them. In the case of Accardi v. United States, supra, the Attorney General had, by regulations, set up a Board of Immigration Appeals to pass upon immigration deportation appeals. It was a non-statutory board composed of his subordinates. A hearing officer found that the plaintiff Accardi was deportable. The Board of Immigration Appeals affirmed that decision. The Attorney General then ordered him deported. The Court held the deportation order was invalid. It found that the Attorney General had dictated the decision of the Board of Immigration Appeals. The Court stated (p. 267 U.S.):

> "* * * In short, as long as the regulations remain operative, the Attorney General denies himself the right to sidestep the Board or dictate its decision in any manner."

The plaintiffs, in addition to relying upon the cases just cited, also rely upon the case of John A. Johnson Con-

tracting Corp. v. United States (Ct. Cl. 1955), 132 F. Supp. 698. In that case the plaintiff had entered into a construction contract with the United States. The contract contained Article 15, the so-called standards dispute clause, under which disputes arising under the contract concerning questions of fact were to be decided by the contracting officer. It further provided a right of appeal to the Secretary of War whose decision was to be final and conclusive. The Secretary of War had designated the War Department Board of Contract Appeals to hear such appeals. The contracting officer terminated the contract for delay in performance. The War Department Board of Contract Appeals affirmed that decision. The Court of Claims found that the commanding officer of the contracting officer and the attorneys for the Government had influenced the contracting officer to make the decision terminating the contract, which was contrary to the decision he had earlier intended to make. The Court held that the interposition of the contracting officer's commanding officer and the attorneys for the Government nullified the proceedings. The Court, in referring to the decision of the contracting officer, stated (p. 706):

> "* * * his decision went, on appeal, to the Board of Contract Appeals, clothed, presumably, with some presumption of correctness, because of his competence and his intimate knowledge of the facts. The interposition of the commanding officer and the Government lawyers into the situation, which nullified the contracting officer's decision, were, so far as appears, not known to the plaintiff or to the Board. * * *."

The first question to be considered is as to the character of the part played by the State Administrator at the meeting of the Culberson County Committee on April 26, 1962. The matter of what occurred at that meeting was fully gone into in the hearing before the Review Committee. That meeting of April 26, 1962, was attended by two mem-

bers of the Culberson County Committee, Dee Wilson and Dick Guest. They both testified orally before the Review Committee. In the cross-examination of Dee Wilson in regard to the meeting of April 26, 1962, he testified, in part, as follows:

> "Q. Is it not a fact that the County Committee was furnished with the exact language that it was to put in the Minutes of the meeting on this subject?
>
> "A. Yes, that's right, but we signed that. We agreed to it.
>
> "Q. Didn't the first draft that was furnished to you start out that the Committee has determined?
>
> "A. That's right.
>
> "Q. And didn't the Committee object to that language and insist on changing it by inserting this phrase, 'At the direction of the administrator'?
>
> "A. That's right.
>
> "Q. For what reason was that done?
>
> "A. It did not originate with us through findings or findings that were in process at that time by the Department of Agriculture.
>
> "Q. Isn't it a fact that you did not agree with the conclusion that had been reached?
>
> "A. We did not agree with the wording of that resolution placing the responsibility for that upon the County Committee since were—we were directed to do it."

It is the contention of the Government that if what occurred was an administrative cancellation of the allotments in question by the Secretary of Agriculture acting by the State Administrator, such action was lawful and proper under the applicable statutes and regulations, and especially so since the transfers were obtained by fraud. In con-

nection with the matter of fraud, the Government cites a statement in the case of Pan American Co. v. United States, supra (p. 509 U.S.), to the effect that the Government occupies a special position in relation to frauds which threaten the integrity of governmental policies. This Court does not deem it necessary to pass upon the question of the authority of the Secretary of Agriculture, or the State Administrator acting for him, to administratively cancel the allotments in question. It seems clear that the State Administrator did not purport to himself make the cancellations but was seeking to have the cancellations made by and through the Culberson County Committee and that they were made by that Committee. On April 27, 1962, the day after the meeting in question of the Culberson County Committee, that Committee executed formal cancellations in the name of the Committee and issued notices thereof in the name of the Committee. On May 2, 1962, timely appeals from such notices requesting review thereof by a review committee were filed. On April 27, 1962, the day after the meeting referred to, the Culberson County Committee, in the name of the Committee, issued notices of the impositions of penalties. Such notices were withdrawn and similar notices were issued on June 1, 1962. On July 4, 1962, a hearing as to the correct amount of the penalties was had before the Culberson County Committee, at which hearing the Chandlers appeared and presented evidence. On July 16, 1962, the last of the penalty notices were issued. On June 12, 1962, and July 25, 1962, timely appeals from the penalty notices requesting review thereof by a review committee were filed. The plaintiffs in their appeals to the Review Committee appealed from the notices of cancellations and notices of the penalties issued by the Culberson County Committee. In the proceedings in this Court the plaintiffs raise the following issue. That issue, as stated in their brief, is as follows:

> "Was the action of the Administrator, ASCS, directing the Culberson County ASCS Committee to can-

> cel the allotments * * * and the action of the Culberson County ASCS Committee in taking such action at the direction of the Administrator, a valid exercise of administrative authority?"

It is the view and holding of the Court that what occurred at the county level in this case was not the claimed exercise of administrative authority as to the cancellations but the exercise of interpositional influence at that level.

The members of the Culberson County Committee were not subordinates of the State Administrator who were required to follow the directive of that Administrator in connection with the allotments. The members of county committees are members of a board created by an Act of Congress. They are elected by the eligible producers acting through county conventions. While members of a county committee are removable for cause, yet any vacancies occasioned by removal are filled by the eligible producers acting through county conventions. In one case, at least, the members of a county committee have defied the directive of a State Committee. See Schuetzle v. Duba (D.C. 1962), 201 F. Supp. 754; same case on appeal, Duba v. Schuetzle (8th Cir. 1962), 303 F.2d 570. Section 7.20 of the Regulations provides, in part, as follows:

> "The county committee, subject to the general direction and supervision of the State committee, and acting through community committeemen and other personnel, shall be generally responsible for carrying out in the county the agricultural conservation program, the price support programs as assigned, the acreage allotment and marketing quota programs * * * *."

In the present case the Department of Agriculture had made an investigation which had given the State Administrator reasonable grounds for believing that the transfer of the allotments in question had been procured by fraud practiced on the Culberson County Committee. Therefore,

it was manifestly his duty and responsibility to bring the matter of the cancellation of those allotments before the Culberson County Committee for its consideration. However, it was manifestly improper for him to issue the directive in question to it. It is the view of the Court that the directive given by the State Administrator constituted an improper interposition on his part. In the case of Accardi v. Shaughnessy, supra, the Attorney General was held to have improperly interposed himself into the administrative proceedings. In the case of John A. Johnson Contracting Corp. v. United States, supra, the contracting officer's commanding officer and the attorneys for the Government were held to have improperly interposed themselves into the procedure provided by the contract.

In each of these cases the basis of the nullification of the procedure was that the plaintiff had never been afforded a hearing free from the effect of improper administrative influence. In the case of John A. Johnson Contracting Corp. v. United States, supra, there was a review of the contracting officer's decision by the War Department Board of Contract Appeals. There was no evidence of any improper influence as to the members of that Board. However, the Court of Claims, in reviewing the case, was of the view that, nevertheless, the plaintiff had been prejudiced by the wrongful interposition at the contracting officer level since such interposition was not made known to the War Department Board of Contract Appeals and that Board may have given weight to the decision of the contracting officer. The improper interposition by the Government into administrative proceedings relating to farm allotments has occurred in other cases.

In the case of Crolley v. Tatton (5th Cir. 1957), 249 F.2d 908, there was involved a denial of a cotton acreage allotment. In the hearing before the Review Committee in that case agents of the Department of Agriculture intruded into the domain of that Committee by meeting with

the members of the Committee and discussing aspects of the case with them in the absence of the applicant or his attorneys. The Court held that such intrusion was improper and remanded the proceedings to the Board of Review with directions that it make its independent determination in accordance with lawful administrative procedure.

In the case of Fulford v. Forman (5th Cir. 1957), 245 F.2d 145, the Court discussed the relationship between the County Committees and Review Committees in connection with farm allotments. It then stated (p. 151):

> "* * * But since the standards to be followed are invariably general, and many are so flexible that they would open up avenues for discrimination whether intentional, inadvertent, corrupt, or accidental, there was need for another agency, the County Review Committee, having local roots and hence local responsibility for the review of such actions. * * *."

In the case of Graham v. Lawrimore (4th Cir. 1961), 287 F.2d 207, the County Committee determined that Graham, a tobacco farmer, had filed false acreage reports in connection with his tobacco allotments and reduced his tobacco allotments and assessed penalties. Graham filed an application for a review by a Review Committee. That Committee upheld the action of the County Committee. Graham then brought the matter up for judicial review. In that review he asserted that there were such irregularities in the proceedings of the County Committee as to deny him a fair hearing. The District Court affirmed the action of the Review Committee. On appeal that holding was affirmed. The United States Court of Appeals for the Fifth Circuit stated (p. 208, 209):

> "* * * While the proceedings before the County Committee constituted the initial step in the allotment

reduction, any alleged irregularities at that level were cured by the hearing *de novo* before the Review Committee. The Review Committee affirmed the action of the County Committee only after it had conducted its hearings and made its findings in compliance with the appropriate regulations. Whether or not the County Committee failed to comply with the provisions of the Tobacco Marketing Committee Handbook, or was required to do so, is academic in our view since appellant was given an ample opportunity to present his case under the review procedure."

In the case of Crolley v. Tatton, supra, the interposition of the Government into the cotton allotment proceedings was made at an adjudicatory level. In the present case it was made at the county administrative level. It was heretofore noted that in all of the cases referred to in which the procedure was nullified the basis of the nullification in each case was that at no time had the plaintiff been afforded a hearing free from the effect of improper interpositional influence. Such was not the situation in the present case. The fact of the interposition of the State Administrator at the county level was fully explored at the hearing before the Review Committee and hence the Review Committee knew that the action of the County Committee had been induced by the State Administrator. In the opening statement of counsel for the Government to the Review Committee, it was stated to that Committee in reference to the directive of the State Administrator:

"* * * they [the members of the County Committee] were told that investigation had been made and determined that this was the thing to do * * * they didn't have to do it, but they did do it, and so, if there was any error about that * * * the law provides that they would be back before the Review Committee and we start from scratch. I want to make that clear. We start now and for the first time everybody gets to put

all of his evidence and you gentlemen have the full authority to make the decision * * *."

It was the duty of the Review Committee to hear the matter *de novo* and it seems clear from the record that it did do so. There is no claim or even suggestion that any improper influence was exercised or attempted to be exercised on the members of the Review Committee. All of the parties were given an opportunity to present any evidence they deemed pertinent. No hearsay evidence or other objectionable evidence was presented. The record discloses that the findings, conclusions and determination of the Review Committee were based solely upon the evidence presented to the Committee. The record discloses no statements or other action on the part of the members of the Committee which indicated prejudgment or lack of impartiality on their part. The plaintiffs do not make any claim that the majority members of the Committee were lacking in fairness and impartiality. The Government does not claim that the dissenting member of the Committee was lacking in fairness or impartiality. The record indicates that the hearing was conducted in a manner that reflects credit upon administrative procedure. It is the view of the Court that under the doctrine of Graham v. Lawrimore, supra, the interpositional influence irregularity occurring at the county level was cured by the hearing *de novo* by the Review Committee.

It is the holding of the Court that the review made by the Review Committee was a valid review and that the determination made by it was a valid determination.

There are certain other matters to be considered. After the appeals to the Review Committee had been taken but before those appeals had been heard by that Committee, the plaintiffs on August 22, 1962, commenced the first of their two actions. In that action they sought relief under the Declaratory Judgments Act. Sections 2201 et seq.,

Title 28, U.S.C.A. They also sought relief under the Administrative Procedure Act. Sections 1001 et seq., Title 5, U.S.C.A. On October 17, 1962, after the findings and determination of the Review Committee had been entered, the plaintiffs commenced the second action. In that action, in addition to asking for a review of the findings and determination of the Review Committee, they also sought relief under both of the Acts referred to.

Section 1009(c) of the Administrative Procedure Act provides, in part:

> "(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. * * *."

The claim of the plaintiffs for relief under the Administrative Procedure Act is based, in part, upon the premise that the allotments in question had been administratively cancelled by the State Administrator and, such being the case, they were not validly reviewable by the Review Committee. In that connection the plaintiffs assert that the cancellations allegedly made by the State Administrator were capricious and arbitrary and not supported by substantial evidence within the purview of Section 1009 of the Administrative Procedure Act. Section 1367, Title 7, U.S.C.A., relating to the judicial review of Review Committee proceedings, provides, in part:

> "* * * Notwithstanding any other provision of law, the jurisdiction conferred by said sections [Sections 1361-1368] to review the legal validity of a determination made by a review committee pursuant to said sections shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under said sections."

The holding of this Court that a valid determination had been made by the Review Committee precludes the granting of relief under the Administrative Procedure Act. As heretofore noted, that Act by its terms precludes relief thereunder where an adequate remedy is available. In this case an adequate remedy was available and was made use of.

It is the holding of this Court that the plaintiffs are not entitled to relief under the Administrative Procedure Act.

It has been authoritatively held that where a party is aggrieved by federal administrative action and there is no administrative or statutory review provided for the review of such action a declaratory judgment action will be. United Public Workers v. Mitchell (1947), 330 U.S. 75, 93, 67 S.Ct. 556, 91 L.Ed. 754. See, also, Rusk v. Cort (1962), 369 U.S. 367, 82 S.Ct. 787, 7 L.Ed. 809; Lavery, The Declaratory Judgment In Administrative Law, 14 F.R.D. 479 (1954); American President Lines v. Mackey (D.C. 1953), 120 F. Supp. 897. The granting of declaratory relief is not necessarily to be denied because of the pendency of another action or the availability of another remedy where such action or remedy would not be determinative of the controversy between the parties. Maryland Casualty Co. v. Consumers Finance Service (3d Cir. 1938), 101 F.2d 514, 515. There are two principal criteria made use of by the courts in connection with the matter of granting a declaratory judgment. One is whether the judgment will serve a useful, practical purpose and the other is whether it will terminate and afford relief from uncertainty and insecurity. Panhandle East. Pipe L. Co. v. Michigan Consol. Gas Co. (6th Cir. 1949), 177 F.2d 942, 944; Aetna Casualty & Surety Co. v. Quarles (4th Cir. 1937), 92 F.2d 321, 325.

In the present case the plaintiffs commenced their first action on August 22, 1962. At that time their appeals to the Review Committee had not been set for hearing. It appears

that the plaintiffs were fearsome that there might be quite a lapse of time before the appeals would be heard. It further appears that at the time the plaintiffs were uncertain as to what they might or might not do in connection with their transactions and their cotton production activities. Because of the features referred to, the plaintiffs sought a declaration as to their rights. However, before their application for declaratory relief could be heard on its merits the Review Committee convened and heard and determined the question of the cancellations on the merits. That determination has now been reviewed by this Court and held to be a valid determination, and based on that holding a coercive judgment will be entered. It seems clear that no useful purpose would be served by the entering of a declaratory judgment.

It is the holding of the Court that the application of the plaintiffs for a declaratory judgment be denied.

It was heretofore noted that in March, 1962, the Chandlers had all of the cotton allotments involved in their operations reconstituted under one ASCS farm number. Thereafter they planted cotton on the tracts here in dispute. On August 17, 1962, the Culberson County Committee issued a Notice of Acreage as to the 1962 crop on the reconstituted farm. The Notice informed the Chandlers that all cotton produced on the disputed acreage portion of the reconstituted farm was in excess of the allotment for the reconstituted farm and that unless such excess was destroyed by September 3, 1962, such excess cotton would be penalized and that all cotton produced on the reconstituted farm would be ineligible for price support loans. On August 30, 1962, the Chandlers filed notice of appeal to the Review Committee from the Notice of Acreage of August 17, 1962. The record does not disclose that such appeal has been heard by the Review Committee. The question as to the validity of the cancellation of the allotments has been passed on by this Court herein. Any other questions which

may be raised by the appeal from the Notice of Acreage are not before this Court for consideration.

The plaintiffs on October 17, 1962, as heretofore noted, made application for and secured the issuance of a preliminary injunction. The application, in substance, was based upon the claimed invalidity of the allotment cancellations. It being the holding of the Court that the cancellations were not invalid, the injunction will be dissolved.

IT IS HEREBY ORDERED that judgment shall be entered (1) affirming the determination of the Review Committee; (2) denying the plaintiffs relief under the Administrative Procedure Act; (3) denying the request of the plaintiffs for a declaratory judgment; (4) dissolving the preliminary injunction heretofore issued.

/s/ HENRY N. GRAVEN
Henry N. Graven,
SENIOR UNITED STATES
DISTRICT JUDGE
(Assigned to the Western
District of Texas)

The above is a true copy.

ATTEST:

Maxey Hart, Clerk.

By PAULINE S. SILVENO
Deputy Clerk.

APPENDIX C

Determination of Review Committee

State & County Code & Farm Serial No. 74-055-143.

Review Application No. 16 B.

Date of Filing Application for Review July 25, 1962.

Commodity Upland Cotton.

Crop Year 1961.

Chandler Company
Stockton Bldg.
Fort Stockton, Texas

To all persons who, as operator, landlord, tenant, or sharecropper, are or will be interested in the above-named commodity on the above-identified farm in the year for which the marketing quota being revised is established.

STATEMENT OF THE CASE, FINDINGS OF FACT, CONCLUSIONS, AND DETERMINATION

Statement of the Case

This case came on for hearing before the undersigned review committee, duly appointed by the Secretary of Agriculture pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended, to hear the application for review of the quota. The Hearing was conducted pursuant to Marketing Quota Review Regulations, issued by the Secretary of Agriculture under the authority of said act.

A notice of hearing to take place on the 12th day of September, 1962, at 10:00 o'clock, a.m., at Van Horn, Texas (later continued at El Paso, Texas) was duly given the applicant, and the hearing was in accordance with such notice. The applicant was present at the hearing and was represented by counsel.

There was afforded the applicant the fullest opportunity to be heard and to produce evidence and testimony bearing upon such matters and issues presented by the filing of the application as, under said regulations, the review committee is entitled to consider.

The determination being reviewed was as follows:

> The final revised allotment of zero acres for the applicant's farm concerning the 1961 cotton allotment as established by the Culberson County ASC Committee as well as the farm marketing excess found by the Committee and the crop production for the farm for 1961.

The application sets forth the following grounds:

(See Attached)

Upon the entire record of proceedings in this case, including the evidence and testimony introduced at the hearing and all exhibits filed in the case, the review committee makes the following findings of fact, conclusions, and determination:

FINDINGS OF FACT

(See Attached—Pages 1 through 12)

CONCLUSIONS

(See Attached—Page 13)

DETERMINATION

The Committee finds that all other proposed findings of fact and conclusions submitted in this case are either inconsistent with these findings or they are unnecessary to the Committee's determination of this case.

J.L.D.

The appeal is hereby denied except as to the determination of the 1961 cotton production for applicant's farm

and that is hereby determined to be the amount set out opposite the appropriate farm serial number referring to his farm in 'Findings of Fact, #22' referred to above. In all other respects the application is denied and the allotment remains 0.0 acres as set by the County Committee.

Done at El Paso, Texas, this 27th day of September 1962.

JESSE L. DAFFRON
KERMIT R. WILLIAMS
RALPH MERKLE

Certified as a true and correct copy of the signed original

OSCAR E. BOOTH
(Clerk to Review Committee)
Box 187, Sierra Blanca, Texas

October 2, 1962
Sierra Blanca, Texas

REOPENING OF THE HEARING UPON WHICH THIS DETERMINATION IS BASED

The regulations provide for reopening the hearing upon written request to the review committee by the applicant, the county committee, or other interested parties, within 15 days from the date of mailing the determination, for the purpose of taking additional evidence or of adding any relevant matter or document if the review committee finds that such evidence or document constitutes new evidence not available to the parties at the time of the hearing. In addition, the hearing may be reopened by the Secretary within 45 days from the date of mailing the determination. It will be observed therefore that a decision of a review committee does not become final until 45 days have expired after mailing the determination and the hearing has not been reopened. Until such a determination becomes final it is subject to change and the final determination made by the review committee or by the courts as set forth below

will be used in determining any penalties due in connection with the marketing quota.

INSTITUTION OF JUDICIAL PROCEEDINGS

Section 365 of the Agricultural Adjustment Act of 1938, as amended (7 U. S. Code 1365) provides that suit for judicial review of the review committee's determination may be instituted within fifteen days after notice of the determination is mailed to the applicant. Such suit may be instituted in the United States District Court or any court of record of the State having general jurisdiction, sitting in the county or the district in which the applicant's farm is located.

The application sets forth the following grounds:

1. The cotton on this farm was produced and harvested pursuant to the existence of an allotment issued by the County Committee and approved by the State Director.
2. The subsequent cancellation of this allotment and the issuance on a retroactive basis of the .0 allotment upon which the farm marketing excess is based was an arbitrary and illegal exercise of regulatory authority, making the determination of a marketing excess invalid.
3. If there did exist valid grounds for the subsequent cancellation of the allotment and the issuance of the zero allotment, the issuance of the original allotment by the County Committee and the approval by the State Director was based upon error. Accordingly, no penalty should be imposed on the cotton produced in reliance upon the issuance of the original allotment.
4. Production records produced before the County Committee established that the actual yield of the farm was less than the normal yield on the basis of which the penalty was assessed. Accordingly, the assessed penalty should be based on the actual rather than the estimated normal yield.

5. For other reasons which will be more fully developed on the hearing before the Review Committee.

FINDINGS OF FACT AND CONCLUSIONS

1. The applicant, Fred Chandler, Sr., is a lawyer, a member of the Texas Bar, and a cotton farmer. He has served a term as a member of the Texas State ASC Committee.

2. Fred Chandler, Sr. and Fred Chandler, Jr., his son, compose the partnership known as Chandler Company and were the owners of the Capitan Company, a Texas Corporation.

3. By a deed dated June 27, 1960 and recorded in the records of Culberson County, Texas, the Capitan Company acquired from Paul C. Teas, Jr., of Midland, Midland County, Texas and Laura Sue Sutherland of Dallas, Dallas County, Texas some 3,000 acres of land in Culberson County, Texas, including all of section 9, block 63, Public School Lands, and all of section 3, block 77, Public School Lands. The total purchase price was $450,000, $10,000 of which was paid in cash, $10,000 of which was evidenced by a promissory note due September 1, 1960, $15,000 of which was evidenced by a promissory note due December 1, 1960, and the balance of $415,000 was evidenced by a promissory note payable in annual installments due on December 1 of each year, the first installment being due December 1, 1961 and the remaining balance being due on December 1, 1980. The conveyance to section 9 and section 3 was made subject to the oil, gas and other minerals reserved to the State of Texas in the patents to said lands. By deed dated January 19, 1961, the applicants, Fred C. Chandler, Sr., and Fred C. Chandler, Jr., acquired from Paul C. Teas of Dallas County, Texas, Survey No. 40, block 64, township 7, T & P Ry Co. Survey, Culberson County, Texas. The deed was recorded in the records of

Culberson County. The total purchase price was $22,274, $5,000 of which was paid in cash and the balance was evidenced by a promissory note dated January 19, 1961, for $17,274.00 payable in 10 equal annual installments. The deed conveyed only the surface together with an undivided one-half non participating oil and gas royalty interest.

4. In November 1960 the Chandlers entered into an unrecorded agreeemnt with Paul C. Teas, Jr., and Laura Sutherland under which the note for $415,000 was surrendered and two notes, one for $35,000 and one for $380,000 were executed. The note for $35,000 was intended to reflect the unpaid purchase price on section 9 and the east part of section 3 and upon the payment of that amount the lien on that land was to be released. This agreement which was made on or about November 14, 1960, provided that the Chandlers were to be privileged to pay the full amount on December 1, 1961. Later, on or about November 2, 1961, this agreement was modified to permit the Chandlers to pay one-half of the $35,000 on December 1, 1961 and the balance on December 1, 1962 if they wished to do so.

5. On January 30, 1961, the charter of the Capitan Company was forfeited as of July 16, 1960, because of delinquent franchise taxes. On April 25, 1961, Capitan Company conveyed all its property to Fred Chandler, Sr., and Fred Chandler, Jr., doing business as Chandler Company in consideration of Chandler Company assuming all the liabilities of Capitan Company. Some time in the early part of 1960, but prior to April, at the suggestion of his foreman, James Bennett, Fred Chandler, Sr., telephoned a Mr. Crabtree in Custer County, Oklahoma. Fred Chandler, Sr., later met Crabtree in El Paso and discussed the possibility of selling land in Culberson County, Texas, to farmers in Custer County, Oklahoma, who had lost their farms through eminent domain

proceedings and were therefore eligible to move the cotton allotment on such Oklahoma farms to Texas farms if acquired by such displaced owners. Fred Chandler, Sr., also discussed the matter with a Dr. Maddox in El Paso in April 1960, and saw a copy of a contract Dr. Maddox was using for that purpose.

6. Fred Chandler, Sr., went to Clinton, Custer County, Oklahoma, in the summer of 1960, after calling Harvey White on the phone at the suggestion of Crabtree and Dr. Maddox. On arrival in Clinton, Chandler met White and arranged for him to contact displaced owners and have them meet with Chandler. White was the Performance Supervisor in the Custer County ASCS office and worked under the supervision of Russell Dill, the County Office Manager of the Custer County ASCS office. Chandler made a similar arrangement with Dill. Both White and Dill were active in assisting Chandler in his negotiations with displaced owners. On May 20, 1961, White and Dill were paid $1,765 each by Chandler. This represented approximately $5.00 per acre to each, or $10.00 to both for each acre of cotton allotment which was transferred from Oklahoma to the Chandler Company and Capitan Company land in Culberson County, Texas. This money was returned by White and Dill after an investigation by the United States Department of Agriculture. Dill, as a part of his official duties, was required to interview displaced owners in Custer County relative to their acquisition of land in connection with their applications for the transfer of allotments to their credit in the eminent domain pool. The applicant, Hubert Kephart, was among those interviewed by Dill.

7. Chandler made several trips to Custer County, Oklahoma in the fall of 1960, and negotiated with various farmers who had allotments in the eminent domain pool. Finally, in the latter part of 1960 or the early part of 1961 it was agreed by Fred Chandler, Sr., and the appli-

cants in these proceedings, other than Fred Chandler, Sr., and Fred Chandler, Jr., that the Chandlers would cause a deed to be executed to each applicant covering enough acreage in Culberson County owned or controlled by the Chandlers to give sufficient cropland to support the transfer of the cotton allotment acreage each applicant had in the eminent domain pool. Each deed was to contain a provision under which the grantee assumed an amount of the indebtedness against the land equal to $35.00 for each acre conveyed and also assumed the payment of $20.00 per acre for clearing costs. As part of this transaction it was agreed that the applicants would lease the land conveyed by the deeds to the Chandlers for a period of 20 years and that the rental would be the equivalent of $100.00 per acre for each cotton allotment acre transferred to the land except that in the case of Vernon Fletcher the price was $103.26 per acre and in the case of Hubert Kephart it was $125.00 per acre. A tabulation showing the farm number that was assigned to each tract so conveyed, the name of the purchaser, the date of the deed, the date of the lease, cropland acreage, and allotment acreage is set forth in applicants' Exhibit 6. Fred Chandler, Sr., prepared the deeds and selected the tracts which were to be deeded to each purchaser. None of the purchasers saw the land until a day or two before February 17, 1961. A part of the expenses of the first trip to view the land was paid by Chandler Company. The original deed to A. N. Easley was executed by the Chandlers, although title was in the Capitan Company and the deed to Hubert Kephart described the assumption of a lien to Paul Teas, Jr., of Midland County, Texas, whereas the lien was actually held by Paul Teas, Sr., of Dallas County, Texas. There were errors in five other deeds, and in all, seven correction deeds were executed. Copies of the original deeds and the correction deeds have been made a part of the record. The deeds were statutory

warranty deeds and purported to convey full fee simple title although the grantors did not own all the minerals.

8. The deeds were recorded by Fred Chandler, Sr.

9. The grantees in the deeds made no inquiry as to the title to the land from anyone other than Fred Chandler, Sr., and had no independent title examination made.

10. Prior to November 1961, there was no agreement between the grantees and the Chandlers as to when and how the purchase price of $35.00 per acre was to be paid and there is not now any agreement as to when and how the $20.00 per acre clearing costs are to be paid.

11. There was an oral agreement between the Chandlers and the grantees in the deed that if an irrigation well was drilled on any tract conveyed, the grantee of that tract would deed back one acre of land on which the well was located for $75.00.

12. The grantees in the deeds had no agreement with the prior lienholders that upon payment of the amount of the lien set out in the assumption clause of the deed that the lien as to the tract covered by the deed would be released.

13. Payments were made by the Chandlers on the rentals provided for in the leases at the times and in the amounts shown by applicants' Exhibit 9, except that the payment on March 24, 1961, to L. M. Stout should be $621.00 and the payment of $1,150.00 shown to L. M. Stout on November 29, 1961, is in error. The initial payments shown as being made on February 14, 1961 were in the nature of earnest payments and were to be retained by the recipients even though the allotment transfers were not approved. The original lease to Hubert Kephart was amended but in each lease the rental was fixed at $7,840, even though the total amount paid Kephart was $9,800.

Each lease provided that the Chandlers would pay the taxes on the land covered by the leases.

14. On February 17, 1961, the following applicants appeared before the Culberson County ASC Committee and filed a Form CSS-178:

Vernon McLaughlin
Woodrow Gum
A. N. Easley
L. M. Stout
Jack D. Warner
A. H. Crawford
Hubert Kephart
J. R. Kenney

On May 22, 1961, the following displaced owners appeared at the Culberson County ASC Committee and filed Form CSS-178:

Cecil E. Brown
Lewis Kenney
J. R. Kenney

Vernon Fletcher, Jack Kenney, and Paul Kenney did not appear before the County Committee but filed affidavits requesting that the personal appearance requirement be waived because of illness and each submitted a duly executed Form CSS-178. The Committee approved CSS-178 for Vernon Fletcher on May 5, 1961, for Jack Kenney on May 22, 1961, and for Paul Kenney on July 13, 1961. The applicants, at the time of their appearance before the county committee, or the submission of the Form CSS-178 by Vernon Fletcher, Jack Kenney and Paul Kenney, failed to present all the facts relevant and material to the County Committee in making determination of the transactions in question. Namely, they did not make known to the Committee the following facts:

a. The seller paid approximately $10.00 per acre of pooled cotton allottment to Mr. Harvey White, then

performance supervisor, Custer County Oklahoma ASCS Office and Mr. Russell E. Dill, then County Office Manager, Custer County Oklahoma ASCS Office, to render assistance in obtaining pooled cotton allotments from displaced owners in Custer County, Okahoma.

b. The displaced owners leased the farms to the seller for a 20-year term and the seller paid one-half of the rental for the 20-year term by March 1, 1961, and agreed to pay the second installment by March 1, 1962, except that in the case of L. M. Stout the entire rental was paid in 1961 and in the case of Vernon McLaughlin all the rental was to be paid in 1962.

c. Under the leases, the seller agreed to pay taxes on the land in most cases.

d. The parties had no agreement as to when the land clearing and development costs of $20.00 per acre be paid to the seller.

e. The parties had no agreement as to when the assumed purchase price would be paid to the lien holder.

f. The deeds did not make any reservation of mineral rights although the seller did not own all the mineral rights.

g. The displaced owners had no agreement with the prior lien holders to release such liens upon payment of the purchase price as to the individual tracts allegedly bought by them.

h. The displaced owners had an oral agreement to deed an acre of land back to the seller for $75.00 in the event a well was located on the tract of land allegedly sold to any of the parties.

i. The seller paid earnest money to some of the displaced owners before they visited the Texas land.

The Committee finds that these statements of fact have been established and proven.

15. In the summer of 1961 Fred Chandler, Sr., and many of the Oklahoma applicants were interviewed by investigators for the United States Department of Agriculture concerning the transactions which are the subject matter of these appeals. Thereafter, Fred Chandler, Sr., went to Custer County and met with most of the applicants. Chandler prepared and presented a schedule of payments to be made by the applicants. These payments were equal to 1/10 of the purchase price, exclusive of clearing costs, plus interest, in the case of the tracts in section 40 and one-half of the purchase price, exclusive of clearing costs, plus interest, in the case of tracts in sections 9 and 3. Installments were due on the first lien on sections 9 and 3 on December 1, 1961, and on section 40 on January 19, 1962. The final payments on the lease money as shown by Exhibit 9 were not due until March 15, 1962. As a result of these negotiations the following payments have been made:

(a) On December 1, 1961, Chandler Company paid Paul Tease, Jr., and L. S. Sutherland $566.21 on behalf of Jack Kenney. Thereafter on March 1, 1962, Chandler Company paid Jack Kenney the balance of the lease money in the sum of $500.00 without deduction.

(b) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Paul Kenney. On March 13, 1962, Chandler Company paid Paul Kenney $500.00 as a balance of the lease money without deduction.

(c) On December 1, 1961, Chandler Company paid $566.21 to Paul Teas, Jr., and L. S. Sutherland for Vance Kenney and on either March 13, 1962, or August 13, 1962, paid Vance Kenney $500.00 as the balance of the lease money without deduction.

(d) On December 1, 1961, Chandler Company paid $566.21 for L. M. Stout to Paul Teas, Jr., and L. S. Sutherland and has made no effort to collect from Stout.

(e) On December 1, 1961, Cecil Brown paid Paul Teas, Jr., and L. S. Sutherland $566.21, and on November 29, 1961 was paid $635.00 by Chandler Company as the balance due on the rent.

(f) On December 1, 1961, A. N. Easley paid Paul Teas, Jr., and L. S. Sutherland $566.21, and on November 29, 1961, A. N. Easley was paid $1,610.00 by Chandler Company as the balance due on the rent.

(g) On December 1, 1961, A. H. Crawford paid Paul Teas, Jr., and L. S. Sutherland $1,132.32, and on November 29, 1961, A. H. Crawford was paid $1,150 by Chandler Company as the balance due on the rent.

(h) On December 1, 1961, J. R. Kenney paid Paul Teas, Jr., and L. S. Sutherland $206.64 and on the same date J. R. Kenney paid Paul Teas, Jr. and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Company paid J. R. Kenney a total of $2,845.00 the balance due on rent money.

(i) On December 1, 1961, Vernon McLaughlin paid Paul Teas, Jr., and L. S. Sutherland $2,264.85. On March 13, 1962, Chandler Company paid Vernon McLaughlin $3,942.00 as balance due on rent money.

(j) On December 1, 1961, Woodrow Gum paid Paul Teas, Sr., $232.42. On November 29, 1961, Chandler Company paid Woodrow Gum $755.00 balance due on rent money.

(k) On December 1, 1961 (Seller's Certification obviously in error as it has date of 12-1-62), Jack D. Warner paid Paul Teas, Sr., $232.47. On November 29, 1961, Chandler Company paid Jack Warner $840.00 balance due on rent payments.

(l) On December 1, 1961, Vernon Fletcher paid Paul Teas, Sr., $232.47. On March 13, 1962, Vernon Fletcher was paid $787.50 by Chandler Company as balance due on rent payments.

(m) On December 1, 1961, Hubert Kephart paid Paul Teas, Sr., $1,084.86. On March 13, 1962, Chandler Company paid Hubert Kephart $6,000.

(n) On December 1, 1961, Lewis Kenney paid Paul Teas, Sr., $206.64. On March 13, 1962, Chandler Company paid Lewis Kenney $500.00 balance due on rent.

(o) On December 1, 1961, Walter S. Kenney paid Paul Teas, Sr., $203.54. On March 13, 1962, Chandler Company paid Walter S. Kenney $500.00 balance due on rent.

16. On April 25, 1962, Hubert Kephart and Fred Chandler, Sr., appeared before the Texas State ASC Committee and Kephart was asked the following question by Mr. Pool, a member of the State Committee: Question: "Well, then, the deed that you got was it a clear title to it, do you have a clear title to it now—you wouldn't have to pay a dime if you didn't want to?" To which Kephart answered: "Actually I would not. As far as I'm concerned I won't have to pay anybody a nickle for it because I do have a clear deed to it."

17. Based on the facts and circumstances set forth above, the Committee finds that at the time the applicants made application to the Culberson County Committee to transfer the cotton allotments from the eminent domain pool the applicants and the Chandlers had an understanding to the effect that the applicants were not obligated to pay for the land covered by the deeds in question and were privileged to retain the money ostensibly paid under the leases and that the Chandlers would keep up the required payments on the first liens. That this understanding when coupled with the facts heretofore found constituted a side

agreement by the applicant for the purpose of obtaining an allotment from the allotment pool for a person other than himself.

18. The transactions by which the applicants obtained deeds to the farms in question were not for the purpose of reestablishing the farming operations of the applicants as displaced owners but were schemes and devices to sell the allotments and to transfer the allotments for the benefit of Fred Chandler, Sr., and Fred Chandler, Jr.

19. The certification by each applicant on Form CSS-178 that he had made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself, and the withholding of the information as set out in finding 14, constituted misrepresentations by each applicant under which the transfer of the allotments was obtained.

20. The Culberson County ASC Committee met on April 26, 1962, to consider revision of 1961 farm allotments for farms to which pooled cotton allotment had previously been transferred effective for the 1961 crop of upland cotton. The minutes of the meeting show that the county committee determined that the transfers of pooled cotton allotments must be cancelled for the reason that investigation by the Department of Agriculture disclosed that there were irregularities in certifications that no side agreements existed and that failure to furnish all documents and side agreements, oral or written, was a misrepresentation of the facts when coupled with the certifications on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant (displaced owner).

In accordance with such determination the county committee issued revised notices of zero upland cotton allotment for 1961. Each notice on Form MQ-24-1 was dated April 27, 1962 and mailed to the Capitan Company, c/o

Chandler Company as farm operator and included a typed statement as follows:

> "It has been determined that the transfer of pooled upland cotton allotment acres to this farm does not meet the requirements of Section 719.12 of the Farm Constitition and Allotment Record Regulations."

Such revised notices related to the following farms:

Farm No.	Farm Owner
127	J. R. Kenney
128	Vernon McLaughlin
129	Woodrow Gum
130	A. N. Easley
131	L. M. Stout
132	Cecil E. Brown
133	Jack D. Warner
134	Vernon Fletcher
135	A. H. Crawford
136	Hubert Kephart
138	Lewis Kenney
139	Jack Kenney
140	J. R. Kenney
141	Walter S. Kenney
142	Paul Kenney
143	Vance Kenney

21. The county committee by letter dated February 9, 1962 furnished to Chandler Company a form entitled "Seller's Certification of Bona Fide Sale of Land" which was completed and executed by Fred Chandler, Sr., Partner, Chandler Company. The county committee by letter dated April 26, 1962 requested Chandler Company to complete and file with the committee the same Seller's Certification together with copies of complete contractual arrangements in effect between the buyer and the seller of the land at the time the transfer of allotment was approved by the State and County offices.

The Seller's Certifications and related contractual documents furnished by Chandler Company were reviewed by the Department of Agriculture and it was determined that such certifications should be disapproved. Chandler Company was duly notified of this action.

22. The county committee issued to Chandler Company Forms MQ-93, dated June 1, 1962 for each farm which established the farm marketing excess and amount of penalty due for upland cotton of the 1961 crop. The county committee considered applications for downward adjustment on the basis of evidence of actual production of 1961 cotton on these farms and rejected these applications by issuing to Chandler Company Forms MQ-93 dated July 16, 1962 for each farm.

The production records of Chandler Company which were placed in evidence are satisfactory and support the applications for downward adjustment. The following production in pounds of 1961 cotton is accepted by the committee:

Farm No.	1961 cotton production (pounds)	
127	30,192	
128	21,936	
129	6,193	
130	19,148	
131	2,634	
132	5,348	
133	6,789	
134	4,894	
135	12,844	
136	36,087	
138	3,682	
139	8,205	
140	4,611	
141	3,637	
142	8,560	(Normal yield less than actual).
143	7,397	

23. The stand dates for the 1961 crop of cotton shown by Applicants' Exhibit No. 29 are admitted to be 7 days after seeding of the 1961 crop. The following table shows the farm number, seeding date, date of mailing the original notice of 1961 farm allotment and size of allotment.

Farm No.	1961 Seeding Date	Date of Mailing Original Notice of 1961 Allotment	Size of Original 1961 Allotment (acres)
127	5-17-61	5-4-61	46.9
128	33.1 acres 5-17-61 10.7 acres 5-27-61	5-4-61	43.8
129	5-20-61	5-4-61	15.1
130	6.3 acres 5-27-61 25 acres 5-29-61	5-4-61	32.2
131	6-3-61	5-4-61	6.9
132	6-3-61	7-5-61	12.7
133	5-20-61	5-4-61	16.8
134	5-29-61	6-23-61	15.2
135	5-27-61	5-4-61	23.0
136	20 acres 5-13-61 50 acres 5-17-61 8 acres 5-27-61	5-4-61	78.4
138	6-3-61	7-5-61	10.0
139	5-7-61	7-5-61	10.0
140	5-20-61	7-5-61	10.0
141	6-3-61	7-5-61	10.0
142	5-7-61	7-31-61	10.0
143	5-7-61	7-5-61	10.0

24. On August 17, 1962 the Culberson County ASC Committee mailed to Chandler Company a Notice of Acreage, Form ASCS-590 and applicants have filed an appeal with respect thereto.

Conclusion

1. Under section 711.12 of the Marketing Quota Review Regulations (26 F.R. 10204), the review committee can consider only such matters as under applicable provisions of the Act and regulations of the Secretary are required or permitted to be considered by the county committee in the establishment of the quotas sought to be reviewed.

2. The committee is required to apply the provisions of section 719.12(d)(2) (26 F.R. 1396) of the Farm Constitution and Allotment Record Regulations to the facts determined from the evidence presented in these appeals.

3. The 1961 upland cotton allotment for each of the farms involved in this appeal was properly reduced to zero.

4. The farm marketing excess for 1961 for each farm should be the amount of cotton set forth in finding No. 22.

5. The erroneous notice of allotment provision in section 722.433(a) of the 1961 upland cotton acreage allotment regulations is not applicable to any of the farms because in each case the sole producer, Chandler Company, under a cash lease for each farm did not plant solely in reliance on the erroneous notice of allotment since (a) in all cases the producer as seller of the farms knew that a misrepresentation of the facts had been made to the county committee and (b) in the case of farms 132, 134, 138, 139, 140, 141, 142, and 143 the 1961 cotton crop was seeded prior to the date of mailing the original notice of 1961 farm allotment.

6. The notice of acreage mailed on August 17, 1962 was not a notice of an acreage allotment and farm marketing quota within the meaning of section 362 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1362), and is not reviewable by this committee under the provisions of section 363 of said Act (7 U.S.C. 1362).

FINDINGS OF FACT, CONCLUSIONS AND DETERMINATION OF DISSENTING REVIEW COMMITTEE MEMBER RALPH MERKLE

Findings of Fact

1. Fred Chandler, Sr., and Fred Chandler, Jr., are residents of the State of Texas and are jointly engaged in the business of cotton farming as sole partners in a partnership known as Chandler Co., which partnership is the successor of a new defunct Texas corporation which was owned and controlled by the said Fred Chandler, Sr., and Fred Chandler, Jr., and was known as Capitan Co. Fred Chandler, Sr., Fred Chandler, Jr., Chandler Co. and Capitan Co. shall be deemed one and the same for the purposes of this proceeding. (Tr. 75-76, 94.)

2. On the following dates, the named individuals, hereinafter referred to as the displaced farmers, were displaced from lands in Oklahoma bearing cotton allotments by the Bureau of Reclamation of the United States Department of Interior, an agency of the United States having the power of eminent domain:

Cecil Brown	6-15-58	
A. H. Crawford	7-22-60	
A. N. Easley	7-21-60	
Vernon Fletcher	1-12-61	
Woodrow Gum	4- 7-60	
J. R. Kenney	8-21-58	(46.9 acre allotment)
J. R. Kenney	12-31-58	(10.0 acre allotment)
Lewis Kenney	12-31-58	
W. S. Kenney	12-31-58	
Jack Kenney	12-31-58	
Paul Kenney	12-31-58	
Vance Kenney	12-31-58	
Vernon McLaughlin	12-13-60	
L. M. Stout	12-31-60	
Jack Warner	12-31-60	
Hubert Kephart	12-22-60	

(Tr. 416, 424.)

3. The displaced farmers were advised by various officials of the Bureau of Reclamation and the Department of Agriculture of their statutory right to transfer the cotton allotments formerly assigned to their Oklahoma land to an allotment pool and within three years of the date of displacement from said pool to other lands owned by them. (Tr. 424-425.)

4. The displaced farmers made extensive searches for other lands to which they could transfer their allotment but were unable to find other lands. (Tr. 446-447.)

5. In the summer of 1960, Fred Chandler, Sr. learned of the existence of displaced Oklahoma farmers who were seeking land to which they could attach their allotments. (Tr. 92.)

6. In order to contact these displaced Oklahoma farmers, Fred Chandler, Sr. sought the assistance of Harvey White and Russell Dill, employees of the Custer County, Oklahoma, ASCS Committee, to seek and arrange meetings between Mr. Cahndler and such displaced Oklahoma farmers. (Tr. 97, 98, 100.)

7. Neither Harvey White nor Russell Dill nor the Custer County ASCS Committee was in a position to exercise discretionary influence over the transfer of cotton allotments from Oklahoma to Texas. (Tr. 107, 139.)

8. Mr. Chandler paid Harvey White and Russell Dill the sum of $1,765.00 each for their services in locating purchasers of his land. These sums were later returned to Mr. Chandler. (Tr. 102-106.)

9. At one or more of several meetings with the displaced farmers Mr. Chandler agreed to sell and convey to each of them a tract of land suitable for farming in Culberson County, Texas, for an agreed price of $55.00 per acre. It was agreed that $35.00 per acre of such amount would be paid by assumption and payment by each purchaser of

a $35.00 per acredindebtedness [sic] then owed to others by the Chandlers and secured by vendor's lien and deed of trust lien covering such tract and other land. Mr. Chandler agreed to clear such land suitably for farming, and the Oklahoma purchasers agreed to pay to Mr. Chandler the balance of $20.00 per acre (the estimated cost of such land clearing) upon demand after clearing of all of the land. It was further agreed that upon consummation of the conveyances Mr. Chandler would lease such tracts of land from the respective Oklahoma Purchasers for farming purposes for a term of 20 years for an advance rental equivalent to $100.00 per cotton allotment acre to be transferred to the land, except that in the case of Hubert Kephart, it was agreed that the lease rental would be equivalent to $125.00 per acre of such cotton allotment. (Tr. 113-115, 119.)

10. It was orally understood that during the lease term Mr. Chandler would drill irrigation wells to produce water with which to irrigate the farms, and that, in the case of any producing wells drilled on the Oklahoma farms, the owner would sell and convey to Mr. Chandler the one acre of land on which the producing well was located at a price of $75 per acre.

11. Mr. Chandler explained to the displaced farmers that the land which they were purchasing was subject to a recorded prior lien covering such land plus other tracts of land and that payments would be made in compliance with the requirements of that prior lien. Mr. Chandler was to notify the individual purchasers of the amount of payment and date of payment. (Tr. 113, 115.)

12. Mr. Chandler agreed to pay the lease rent in advance to those who requested it. (Tr. 127.)

13. During the course of these negotiations, no agreement was made that Mr. Chandler would at any time re-

purchase the land to be sold to the Oklahoma farmers. (Tr. 137-139, 417, 426.)

14. Pursuant to the agreement so reached, the displaced farmers purchased by warranty deeds, executed, and recorded as follows, land in Culberson County, Texas:

Purchaser	Date Executed	Filed for Record
J. R. Kenney	1-25-61	5-24-61
V. McLaughlin	1-28-61	2-13-61
W. Gum	2-11-61	2-13-61
A. N. Easley	1-28-61	4- 6-61
L. M. Stout	1-28-61	2-13-61
C. Brown	1-28-61	2-13-61
J. D. Warner	2-11-61	2-13-61
V. Fletcher	2-11-61	2-13-61
A. H. Crawford	1-28-61	2-13-61
H. Kephart	1-28-61	2-13-61
D. Kenney	1-25-61	4- 6-61
Jack Kenney	1-28-61	4- 6-61
J. R. Kenney	1-28-61	2-13-61
W. S. Kenney	1-25-61	4- 6-61
J. P. Kenney	1-27-61	4- 6-61
V. Kenney	1-28-61	4- 6-61

(Tr. 125, Applicants' Exhibit 4.)

15. The deeds did not reserve a specific vendors' lien or contain any provision which would allow the land to revert automatically to Mr. Chandler under any condition. (Tr. 125, Applicants' Exhibit 4.)

16. The deeds made no specific reservation of mineral or water rights and conveyed to the purchaser any and all mineral and water rights owned by Mr. Chandler. The evidence does not establish that there was any agreement or understanding that the Chandlers would repurchase the land, or that the land would be permitted to revert to the Chandlers through foreclosure proceedings, following nonpayment of the purchase price. The evidence establishes

to the contrary that the Chandlers could have provided for foreclosure if they had reserved a vendor's lien in the deed, but that they failed to do so, and that in the absence of a vendor's lien the only manner in which the Chandlers could regain ownership of the land would be to make demand for payment of any unpaid purchase price, reduce any unpaid portion of the purchase price to judgment, and then enforce the judgment by filing a bill in equity to sell the land at a sheriff's sale at which the Chandlers would be required to bid for the land, at its then current value against all bidders, and any excess would go not to the Chandlers, but to the Oklahoma farmers. (Tr. 125, 479, Applicants' Exhibit 4)

17. No notes or deeds of trust were executed in Mr. Chandler's behalf. (Tr. 261.)

18. The land conveyed by said deeds was of economical and efficient dimensions and was grouped in such manner as to allow the purchasers to combine their farms should they desire to do so. (Tr. 131-133, 294; Applicants' Exhibit 7.)

19. In several instances deeds of correction were required to correct errors in property description and execution as follows:

Purchaser	Deed Executed	Filed For Record
W. Gum	5-20-61	5-25-61
J. D. Warner	5-20-61	5-24-61
V. Fletcher	5-20-61	5-24-61
H. Kephart	5-20-61	5-24-61
L. Kenney	5-20-61	5-24-61

(Tr. 123-125; Applicants' Exhibit 4.)

20. The displaced farmers filed or caused to be filed Forms CSS-177 requesting the transfer of the allotments assigned to their Oklahoma lands to an allotment pool.

21. Shortly following the execution of the original deeds, the displaced farmers granted leases of 20-year tenancy to Mr. Chandler:

Lessor	Lease Date
Cecil Brown	2-1-61
A. H. Crawford	2-1-61
J. R. Kenney	2-1-61
Jack Kenney	2-1-61
Lewis Kenney	2-1-61
Paul Kenney	2-1-61
Walter Kenney	2-1-61
Vance Kenney	2-1-61
Hubert Kephart	2-1-61
Vernon McLaughlin	2-1-61
L. M. Stout	2-1-61
Vernon Fletcher	3-15-61
A. N. Easley	3-21-61
Woodrow Gum	Not Dated
Jack Warner	Not Dated

(Tr. 126; Applicants' Exhibit 5.)

22. The displaced farmers, pursuing what they believe to be their statutory rights, made application to the Culberson County ASCS Committee for transfer of the acreage allotments previously validly subsisting on their condemned Oklahoma lands from an allotment pool to their Culberson County, Texas, lands. (Comm. Exhibits 2-17, Forms CSS-178.)

23. On February 17, 1961, the following displaced farmers appeared before the Culberson County ASCS Committee:

J. R. Kenney, Vernon McLaughlin, Woodrow Gum, Arthur Easley, L. M. Stout, Jack Warner, A. H. Crawford and Hubert Kephart. (Tr. 140, 418; Applicants' Exhibit 10.)

24. On May 22, 1961, the following displaced farmers appeared before the Culberson County ASCS Committee: Cecil Brown, Lewis Kenney, J. R. Kenney, W. S. Kenney, and Vance Kenney. (Tr. 152-153; Applicants' Exhibit 12.)

25. The following displaced farmers appeared before the Culberson County ASCS Committee by affidavit on the dates indicated: Jack Kenney, May 22, 1961; Vernon Fletcher, June 23, 1961; and J. P. Kenney, July 13, 1961. (Comm. Exhibits 2-17, Affidavits.)

26. In their appearances before, or in their affidavits to, the Culberson County ASCS Committee, the displaced farmers made a complete, accurate and cooperative account of all information requested of them and produced all documents requested of them by the Committee and no misrepresentation of fact was made by or on behalf of the Oklahoma farmers or by or on behalf of Mr. Chandler. (Tr. 142-146, 153-155, 418, 427.)

27. No explanation was given to Mr. Chandler or the displaced farmers as to the meaning of the terms "scheme or device," "side agreement," or "for the benefit of a person other than the displaced owner," or as to any information which should be furnished to the Committee in order to enable it to ascertain whether the proposed transfer met these criteria. (Tr. 332-353, 359-362, 374-376.)

28. There is no evidence to establish that either the displaced farmers or Mr. Chandler knowingly withheld any information, facts or circumstances from the Committee, or that they knowingly withheld from or failed to furnish to the Committee any information, facts or circumstances which they had any reason to believe were material to the transfer.

29. The Culberson County ASCS Committee approved the CSS-178 applications as follows:

Applicant	ASCS Farm Number	Date Approved
Hubert Kephart	136	2-17-61
Woodrow Gum	129	2-17-61
A. N. Easley	130	2-17-61
A. H. Crawford	135	2-17-61
J. R. Kenney	127	2-17-61
Vernon McLaughlin	128	2-17-61
L. M. Stout	131	2-17-61
Vernon Fletcher	134	5- 4-61
W. S. Kenney	141	5-22-61
Vance Kenney	143	5-22-61
Cecil Brown	132	5-22-61
Lewis Kenney	138	5-22-61
Jack Kenney	139	5-22-61
J. R. Kenney	140	5-22-61
Paul Kenney	142	7-13-61

(Tr. 141-142, 148-150, 153-154.)

30. Thereafter, the Texas State ASCS Office approved the action of the Culberson County ASCS Committee in transferring the said allotments as follows:

Applicant	ASCS Farm Number	Date Approved
Hubert Kephart	136	4-28-61
Woodrow Gum	129	4-28-61
A. N. Easley	130	4-28-61
L. M. Stout	131	4-28-61
A. H. Crawford	135	4-28-61
J. R. Kenney	127	4-28-61
Vernon McLaughlin	128	4-28-61
Vernon Fletcher	134	6-19-61
W. S. Kenney	141	6-27-61
Vance Kenney	143	6-27-61
Cecil Brown	132	6-27-61
Lewis Kenney	138	6-27-61
Jack Kenney	139	6-27-61
J. R. Kenney	140	6-27-61
Paul Kenney	142	7-28-61

(Applicants' Exhibits 2-17, Forms CSS-178, Part III.)

31. Fred Chandler, Sr., and Fred Chandler, Jr., as lessee-operators of the said farms, in reliance upon the 1961 allotments planted, harvested, and either marketed or placed under government loan a 1961 cotton crop produced upon the said land. (Tr. 207-211.)

32. On February 9, 1962, the Culberson County ASCS Committee, at the direction of the Department of Agriculture, requested Mr. Chandler to complete and file with the Committee three copies of a "Seller's Certification of Bonafide Sale of Land" respecting each of the 16 farms sold to the displaced farmers. (Tr. 166-167.)

33. On March 9, 1962, Mr. Chandler executed the Seller's Certifications. In so doing Mr. Chandler certified that the first payment had been made in the manner shown on the certifications, the payments being made by the purchasers except in four cases noted on the certification in which Mr. Chandler made the payment at the request of the pur-

chaser; that he entered into no side agreement with the purchasers for the return of the purchase price; that he did not pay or arrange for the financing of the purchasers' payments (except in four instances noted on the certifications); and that the purchaser is personally liable for completing his payments. In all respects the information so certified was accurate and complete. (Tr. 168-172.)

34. Payments made by the displaced farmers to first lien holders, Paul C. Teas, Jr. and Laura Sue Sutherland, and recited in the above Seller's Certificates were as follows :

J. R. Kenney to L. S. Sutherland, $1,132.43, November 30, 1961

A. H. Crawford to Paul Teas, $566.21, December 1, 1961

A. H. Crawford to L. S. Sutherland, $566.21, December 1, 1961

Cecil Brown to Paul Teas, $283.10, November 30, 1961

Cecil Brown to L. S. Sutherland, $283.10, November 30, 1961

J. D. Warner to Paul Teas, $232.47, November 30, 1961

Woodrow Gum to Paul Teas, $232.47, November 30, 1961

J. R. Kenney to Paul Teas, $206.64, November 30, 1961

Vernon Fletcher to Paul Teas, $232.47, November 30, 1961

Hubert Kephart to Paul Teas, $1,084.86, November 29, 1961

J. R. Kenney to Paul Teas, $1,132.43, November 30, 1961

Vernon McLaughlin to Paul Teas, $1,132.43, December 1, 1961

Vernon McLaughlin to L. S. Sutherland, $1,132.43, December 1, 1961

A. N. Easley to L. S. Sutherland, $849.32, November 30, 1961

A. N. Easley to Paul Teas, $849.32, November 30, 1961

Lewis Kenney to Paul Teas, $206.64, December 1, 1961

W. S. Kenney to Paul Teas, $203.54, December 1, 1961

(Applicants' Exhibit 16, Tr. 172.)

35. Four of the displaced farmers were unable to make their first year's payments and requested Mr. Chandler to make such payments for them. Accordingly, Mr. Chandler made and credited to the appropriate account receivable the following payments, each of which was accurately reported on the appropriate "Seller's Certification of Bona Fide Sale of Land":

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for L. M. Stout

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for L. M. Stout

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Jack Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Jack Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Paul Kenney

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Paul Kenney

Chandler Co. to Paul Teas, $283.10, December 1, 1961 for Vance Kenney

Chandler Co. to L. S. Sutherland, $283.10, December 1, 1961 for Vance Kenney

(Tr. 175, Applicants' Exhibit 16.)

36. Thereafter, on or about March 20, 1962, in response to a request by Mr. Chandler, as lessee-operator, the Cul-

berson County ASCS Committee combined into one reconstituted farm, the farms owned by the displaced farmers and other lands and operated by the Chandlers. (Tr. 201-205, 207, 291-292.)

37. On or about April 26, 1962, the Culberson County ASCS Committee, at the direction of the Administrator, ASCS, entered in its minutes a finding that investigation disclosed irregularities in the certification that no side agreements existed relating to the sale and leaseback of the land involved, and that it had been concluded that failure to furnish all documents and side agreements (oral or written) was a misrepresentation of the facts when coupled with the applicants' certifications on Form CSS-178 that there were no side agreements for the purpose of obtaining an allotment for a person other than the applicant. (Applicant's Exhibit 19-A, Tr. p. 192, 193.)

38. This finding and conclusion was entered in the minutes of the Committee solely at the direction of the Administrator, ASCS, or of others, and was not the result of independent decision by the Culberson County ASCS Committee. Nevertheless, the Committee, on or about April 27, 1962, pursuant to such determination, cancelled the allotments which had theretofore been issued for the crop year 1961, and issued zero allotments in lieu thereof. (Committee Exhibits 2-17, Forms MQ-24-1 mailed 4-27-61, Tr. pp. 192-193, 353-357.)

39. By stipulation of the parties herein, Mr. Chandler's appeals from this order are on behalf of the displaced farmers, as well as his own, and by virtue of such stipulation the displaced farmers are parties herein. (Tr. 3-4.)

40. On April 12, 1962, the Culberson County ASCS Committee executed Notices of Farm Acreage Allotment and Marketing Quota which provided no 1962 acreage allotment for the disputed acreage portion of the reconstituted farm. (Tr. 203-205, Applicants' Exhibits 22-1, 22-2.)

41. Believing that the 1962 allotment for such disputed acreage was still under consideration and that the notice of April 12 did not represent a final determination. Mr. Chandler filed no appeal from such notice. (Tr. 205-206.)

42. On April 26, 1962, the Culberson County ASCS Committee, at the direction of the Texas State ASCS Office and/or the United States Department of Agriculture, informed Mr. Chandler that unless he filed the Seller's Certifications above referred to, together with all pertinent documents, the cancelled 1961 allotments for the Culberson County farms purchased by the displaced farmers would receive no further consideration and the 1962 allotment for such acreage would be affected accordingly. (Tr. 186-188.)

43. On May 3, 1962, Mr. Chandler furnished the requested Seller's Certifications, together with copies of the relevant deeds, leases, and first annual payment checks involved in the transactions. (Tr. 188-194, Applicants' Exhibit 19a.)

44. On or about May 4, 1962, Fred Chandler, Sr., and Fred Chandler, Jr., filed timely appeals from such notices requesting review by a statutory review committee of the said notices of allotment respecting both the 1961 and 1962 allotments. (Comm. Exhibits 2-17, Forms MQ-53, dated 5-4-62.)

45. On May 8, 1962, the Culberson County ASCS Committee issued notices of penalties aggregating approximately $58,371.87 which penalties were calculated on the basis of the estimated normal yield of all cotton produced on the disputed acreage during 1961. Such notices were withdrawn on May 11, 1962, and later reissued on June 1, 1962, and July 16, 1962. (Tr. 194-195, 197, 199; Comm. Exhibits 2-17, Forms MQ-93; Applicants' Exhibit 20.)

46. Mr. Chandler filed timely appeals from the said notices of penalty on or about June 12, 1962, and July 25,

1962. (Comm. Exhibits 2-17, Forms MQ-53, dated June 12 and July 25, 1962.)

47. On May 8, 1962, the Culberson County ASCS Committee issued to Mr. Chandler Forms MQ-92, Determination of Farm Normal Yield for Farm with Excess Upland Cotton Acreage and Estimate of Production for Current Crop, for each of the farms purchased by the displaced farmers. Each of these farms established 856 pounds of cotton per acre as the normal yield. (Comm. Exhibits 2-17, Forms MQ-92, dated 5-8-62.)

48. On June 1, 1962, Mr. W. Lewis David informed Mr. Chandler that, upon review of the Texas State ASCS Committee and the Department of Agriculture it had been determined that the Seller's Certifications filed by Mr. Chandler did not establish bona fide sales of land and were therefore disapproved. (Applicants' Exhibit 2; Tr. 196-198.)

49. On June 30, 1962, Mr. Chandler timely filed Forms MQ-98, Farm Operator's Report of Upland Cotton Production, for all farms purchased by the displaced farmers and operated by him, except Farm No. 142, owned by Paul Kenney, as to which farm the actual yield exceeded the normal yield set forth on the MQ-93 penalty notice for that farm. In the case of all of the other Culberson County farms owned by the displaced farmers, the MQ-98 Report established by documentation a lower actual yield than the normal yield arbitrarily established in the MQ-93 penalty notice. (Comm. Exhibits 2-17, MQ-98 dated 6-30-62.)

50. On July 4, 1962, hearing was held before the Culberson County ASCS Committee, in connection with the MQ-98 forms filed by Mr. Chandler, to determine whether downward adjustment of the 1961 farm marketing excess established by the MQ-93 penalty notices should be made. Mr. Chandler presented evidence that the 1961 crop on the Oklahoma farms was below normal yield due to late planting, the fact that this was an initial crop on this land, and.

due to an early frost. Mr. Chandler presented documentary evidence in the form of gin tickets and sale documents to establish actual production. (Tr. 199-201.)

51. On July 6, 1962, the Committee determined that Mr. Chandler had not satisfactorily established the actual 1961 production on the Oklahoma farms and refused to make the requested downward adjustment. (Tr. 199-201.)

52. On the basis of uncontested evidence in this hearing, the following actual yields are found for those farms not exceeding the normal yield:

Farm Number	Actual Yield In Pounds
127	30,192
128	21,936
129	6,193
130	19,148
131	2,634
132	5,348
133	6,789
134	4,894
135	12,844
136	36,087
138	3,682
139	8,205
140	4,611
141	3,637
143	7,397

(Tr. 412-413.)

53. On July 16, 1962, a third series of Forms MQ-93 were prepared by the Culberson County ASCS Committee and mailed to Mr. Chandler. These notices provided the same zero allotment and marketing quota and imposed the same penalties based upon normal yields for the 1961 crop on the Oklahoma farms as the previous MQ-93 Forms. (Comm. Exhibits 2-17, Forms MQ-93, dated July 16, 1962.)

54. On July 17, Mr. Chandler filed timely forms MQ-53, Applications for Review of the determination of July 16. (Comm. Exhibits 2-17, Forms MQ-53, dated July 17, 1962.)

55. Relying upon the 1961 acreage allotments and marketing quotas and statements made by various officials of the Department of Agriculture and believing in good faith that 1962 allotments and marketing quotas would issue, Fred Chandler, Sr., and Fred Chandler, Jr., planted the disputed acreage portion of the reconstituted farm to cotton in the spring of 1962. (Tr. 207-211.)

56. On August 17, 1962, the Culberson County ASCS Committee issued a Notice of Acreage as to the 1962 crop on the reconstituted farm. Said notice informed Fred Chandler, Sr., and Fred Chandler, Jr., that all cotton produced on the disputed acreage portion of the reconstituted farm for 1962 was in excess of the allotment for said reconstituted farm and that, unless such excess was destroyed by September 3, 1962, such excess cotton would be penalized and all cotton produced on said reconstituted farm would be ineligible for price support loans. (Comm. Exhibits 2-17, Form CS-590 dated August 17, 1962.)

57. On August 30, 1962, Mr. Chandler filed timely appeals from said Notice of Acreage of August 17, 1962. (Comm. Exhibits 2-17, Form MQ-53 dated August 30, 1962.)

Conclusions

1.

The displaced farmers were entitled, under the provisions of Section 378 of the Agricultural Adjustment Act, to have their cotton allotments transferred from their Oklahoma lands, taken by the Bureau of Reclamation pursuant to the power of eminent domain, to other land owned by them.

2.

Following the transfer of the cotton allotments by the Culberson County ASCS Committee and the subsequent approval of such action by the Texas State ASCS office the allotments thereafter could be cancelled only upon a finding that the transfer was secured by misrepresentation knowingly made of a fact or a circumstance material to the issue of ownership, or material to the issue of whether there was a side agreement or a scheme or device to transfer the allotment for the benefit of another which effect prevented the transfer of ownership of the land acquired by the displaced owners.

3.

The facts and circumstances presented in the evidence do not establish that there was misrepresentation knowingly made by or on behalf of the applicants material to the issue of ownership or material to the issue of whether there was a side agreement or a scheme or device to transfer the allotment for the benefit of another which in effect prevented the transfer of ownership.

DETERMINATION

The above entitled cause having come on to be heard before a duly constituted and appointed ASCS Review Committee, on the 12th, 13th and 14th days of September, 1962, at which time counsel for the respective parties were heard and evidence adduced and based upon the arguments so made and the evidence adduced the foregoing Findings of Fact and Conclusions were made and upon those Findings of Fact and Conclusions IT IS DETERMINED BY ME THAT:

1. The Culberson ASCS Committee, acting pursuant to the provisions of Section 378 of the Agricultural Adjustment Act, as amended, transferred the cotton allotments

of the displaced farmers listed below to the land owned by them and operated by Fred Chandler, Sr., and Fred Chandler, Jr., in Culberson County, Texas, and issued 1961 allotments on said land as set forth opposite their names, and the Texas ASCS office approved these transfers and the issuance of the allotments:

Name	1961 Allotment
J. R. Kenney	46.8
Vernon McLaughlin	43.8
Woodrow Gum	15.2
A. N. Easley	32.2
L. M. Stout	6.9
Cecil E. Brown	12.7
Jack V. Warner	16.8
Vernon Fletcher	15.2
A. H. Crawford	23.0
Hubert Kephart	78.4
Lewis E. Kenney	10.0
Jack H. Kenney	10.0
J. R. Kenney	10.0
W. S. Kenney	9.4
Paul Kenney	10.0
Vance Kenney	10.0

2. The cancellation of these 1961 allotments by the Culberson County ASCS Committee on April 27, 1962, and the issuance of zero allotments in lieu thereof was in error. Accordingly, the 1961 quotas and allotments originally issued are hereby reinstated and the penalties which have been assessed by notice of the Culberson County ASCS Committee dated July 1, 1962, and July 15, 1962, are hereby set aside.

3. Cotton allotments on this land for the year 1962 have been improperly withheld and should be issued immediately by the Culberson County ASCS Committee as a part of Reconstituted Farm 6504.

APPENDIX D(1) [7 U.S.C. § 1378]

§ 1378. Transfer of acreage allotments ensuing from agency acquisition of farmlands.

(a) Allotment pool.

Notwithstanding any other provision of this chapter, the allotment determined for any commodity for any land from which the owner is displaced because of acquisition of the land for any purpose, other than for the continued production of allotted crops, by any Federal, State, or other agency having the right of eminent domain shall be placed in an allotment pool and shall be available only for use in providing allotments for other farms owned by the owner so displaced. Upon application to the county committee, within three years after the date of such displacement, or three years after the enactment of this section, whichever period is longer, any owner so displaced shall be entitled to have established for other farms owned by him allotments which are comparable with the allotments determined for other farms in the same area which are similar except for the past acreage of the commodity, taking into consideration the land, labor, and equipment available for the production of the commodity, crop-rotation practices, and the soil and other physical factors affecting the production of the commodity: *Provided*, That the acreage used to establish or increase the allotments for such farms shall be transferred from the pool and shall not exceed the allotment most recently established for the farm acquired from the applicant and placed in the pool. During the period of eligibility for the making of allotments under this section for a displaced owner, acreage allotments for the farm from which the owner was so displaced shall be established in accordance with the procedure applicable to other farms, and such allotments shall be considered to have been fully planted. After such allotment is made under this section, the proportionate part, or all, as the case may be, of the past acreage used in establishing the allotment most recently placed

in the pool for the farm from which the owner was so displaced shall be transferred to and considered for the purposes of future State, county, and farm acreage allotments to have been planted on the farm to which allotment is made under this section. Except where paragraph (c) requires the transfer of allotment to another portion of the same farm, for the purpose of this section (1) that part of any farm from which the owner is so displaced and that part from which he is not so displaced shall be considered as separate farms; and (2) an owner who voluntarily relinquishes possession of the land subsequent to its acquisition by an agency having the right of eminent domain shall be considered as having been displaced because of such acquisition.

(b) Circumstances precluding application of provisions.

The provisions of this section shall not be applicable if (1) there is any marketing quota penalty due with respect to the marketing of the commodity from the farm acquired by the Federal, State, or other agency or by the owner of the farm; (2) any of the commodity produced on such farm has not been accounted for as required by the Secretary; or (3) the allotment next established for the farm acquired by the Federal, State, or other agency would have been reduced because of false or improper identification of the commodity produced on or marketed from such farm or due to a false acreage report.

(c) Time of displacement determining application of provisions.

This section shall not be applicable, in the case of cotton, tobacco, and peanuts to any farm from which the owner was displaced prior to 1950, in the case of wheat and corn, to any farm from which the owner was displaced prior to 1954, and in the case of rice, to any farm from which the owner was displaced prior to 1955. In any case where the cropland acquired for nonfarming purposes from an owner by an agency having the right of eminent domain repre-

sents less than 15 per centum of the total cropland on the farm, the allotment attributable to that portion of the farm so acquired shall be transferred to that portion of the farm not so acquired. (Feb. 16, 1938, 3 p. m., ch. 30, title III, § 378 (a—c). as added Aug. 28, 1958, Pub. L. 85-835, title V, § 501, 72 Stat. 995.)

CODIFICATION

Section is comprised of subsecs. (a—c) of act Feb. 16. 1938, § 378, as added Aug. 28, 1958, Pub. L. 85-835. Subsec. (d) is set out as Savings Clause note under this section.

SAVINGS CLAUSE

Section 378 (d) of act Feb. 16, 1938, as added by Pub. L. 85-835, § 501, provided in part that: "but any transfer or reassignment of allotment heretofore made under the provisions of these sections [former sections 1313 (h), 1334 (d), 1344 (h), 1353 (f) and 1358 (h) of this title] shall remain in effect, and any displaced farm owner for whom an allotment has been established under such repealed section [such sections] shall not be eligible for additional allotment under subsection (a) of this section [subsec. (a) of this section] because of such displacement."

APPENDIX D(2)

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 11]

PART 719—RECONSTITUTION OF FARMS, FARM ALLOTMENT, AND FARM HISTORY AND SOIL BANK BASE ACREAGES

Transfer of Allotment From the Pool

Basis and purpose. This amendment is issued pursuant to section 375(b) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1375(b)) and section 124 of the Soil Bank Act (7 U.S.C. 1812) and interprets and applies section 378 of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1378). The purpose of the amendment is to make the procedures for the transfer of allotment from the pool under 7 U.S.C. 1378 more effective in preventing the sale of allotments from the pool or the transfer of allotments from the pool for the benefit of some person other than the displaced owner.

Since applications under 7 U.S.C. 1378 are now pending and many more will be filed in the near future, it is hereby determined that compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (5 U.S.C. 1003) is impracticable and contrary to the public interest and this amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 719.12(d)(2) (23 F.R. 7694) is amended to read as follows:

(2) *Transfer of allotment from the pool.* Upon written application by the displaced owner by August 29, 1961 or within three years after such owner is displaced, whichever

is later, to the county committee of the county in which the farm which is to receive allotment from the pool is located, the county committee shall determine whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself. Before an application is acted upon by the county committee the applicant shall personally appear before the county committee after reasonable notice and bring with him all pertinent documents for examination by the committee and answer all pertinent questions bearing on the proposed transfer, unless the State committee determines from facts presented to it on behalf of the applicant that the applicant would be unduly inconvenienced by such an appearance on account of illness or other good cause and an appearance by the applicant before the county committee would serve no useful purpose. If an allotment is transferred hereunder and it is later determined by the county committee that the transfer was obtained by misrepresentation by or on behalf of the applicant the allotment for the farm shall be reduced by the amount of the transfer for each year the transfer purportedly was in effect and if the time for withdrawal from the pool has not expired the amount of the reduction shall be returned to the pool. The action of the county committee in approving or disapproving an application or in reducing the allotment for misrepresentation shall be effective only upon approval of the State committee or its representative and the issuance of an appropriate allotment notice under the applicable commodity regulations. If the county committee

determines that the transaction by which the displaced owner acquired the farm to which the allotment is to be transferred and the proposed transfer is for the bona fide purpose of reestablishing the farming operations of the displaced owner and is not a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner the county committee shall determine the allotment or increase of allotment to be transferred from the pool to such farm. The allotment to be transferred for a commodity shall be no greater than an amount required to establish an allotment comparable with allotments determined for other farms in the same area which are similar except for the past acreage of the commodity, taking into consideration the land, labor and equipment available for the production of the commodity, crop-rotation practices, and the soil and other physical factors affecting the production of the commodity: *Provided, however,* That the acreage transferred from the pool shall not exceed the allotment most recently established for the farm acquired from the applicant and placed in the pool. When all or a part of the allotment placed in the pool is transferred and used to establish or increase the allotment for other farms owned or purchased by the displaced owner, all or the proportionate part of the past acreage history for the farm from which the owner was displaced shall be transferred to, and considered for purposes of future allotments, to have been planted on the farm for which an allotment is established or increased under this section. If only a part of the available allotment is transferred from the pool, the remaining part of the allotment and past acreage history shall remain in the pool for transfer to other farms of the displaced owner until all such allotment acreage has been transferred or until the period of eligibility for establishing or increasing allotments under this section has expired.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375; sec. 124, 70 Stat. 198; 7 U.S.C. 1812 interprets and applies sec. 378,

72 Stat. 988, as amended; 7 U.S.C. 1812 interprets and applies sec. 378, 72 Stat. 988, as amended; 7 U.S.C. 1378)

Done at Washington, D. C., this 14th day of February, 1961.

H. D. GODFREY,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 61-1452; Filed, Feb. 16, 1961; 8:48 a.m.]

APPENDIX D(3)

APPENDIX D(3) [7 C.F.R. § 719.12]

§ 719.12 Pooling of farm acreage allotments where the farm owner is displaced by a Federal, State, or other agency having the right of eminent domain.

(a) *Applicability*—(1) *General limitation.* This section shall not be applicable to a farm acquired by a Federal, State, or other agency having the right of eminent domain (referred to in this section as "agency") if the allotment next established after the owner is displaced for such farm would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm or due to a false acreage report. This section also shall not be applicable to any farm from which the owner was displaced:

(i) Prior to 1950, in the case of upland cotton, extra long staple cotton, tobacco, and peanuts;

(ii) Prior to 1954, in the case of wheat and corn; and

(iii) Prior to 1955, in the case of rice.

(2) *Special limitations.* This section shall not be applicable if any of the following conditions exist at the time the county committee considers for approval an application filed pursuant to paragraph (d) (2) of this section:

(i) There remains unpaid any marketing quota penalty due with respect to the marketing of the commodity from the farm acquired by an agency or by the owner of the farm so acquired;

(ii) Any of the commodity produced on the farm acquired by an agency has not been accounted for as required under applicable commodity regulations;

(iii) The county in which the farm is located for which the owner applies for transfer of allotment from the pool has no farm acreage allotments currently in effect for the commodity for which application is made, and the county

committee determines that farms in such county are not suitable for the production of such commodity; or

(iv) The farm owner applying for a transfer of acreage from the pool previously had an allotment for the commodity established or increased under superseded related transfer of allotment provisions of commodity regulations because of displacement from the farm by an agency acquisition.

(b) *Related transfer of allotment provisions of commodity regulations are superseded.* This section supersedes related transfer of allotment provisions of commodity regulations, but any allotments established or increased under such provisions shall remain in effect except that any such allotments established or increased in the period August 28, 1958, to the effective date of this section shall be reviewed and revised as may be required to conform to the provisions of this section.

(c) *Where agency will continue production of an allotment crop.* If an agency (1) acquires a farm for the sole purpose of continuing production of an allotment crop, (2) has authority to acquire a farm for such purpose under eminent domain, and (3) files a written notice with the county committee of a county in which the farm is located within 30 days following the date of acquisition or December 31, 1958, whichever is later, designating the allotment crops to be produced on the acquired farm, the acreage allotment established for such farm for each allotment crop for which production will be continued shall remain effective and not pooled and the allotments for such farm for subsequent years shall be determined in accordance with applicable commodity regulations.

[Paragraph (c) amended, Amdt. 7, 25 F.R. 2881, Apr. 6, 1960]

(d) *Where agency will not continue production of allotment crops*—(1) *Allotment pool.* If an agency acquires

a farm and no notice is filed by the agency designating a particular allotment crop as one to be produced on the acquired farm pursuant to paragraph (c) of this section, the allotment for such commodity shall be placed in an allotment pool in accordance with subdivisions (i) or (ii) of this subparagraph. The allotment placed in a pool in accordance with these regulations shall be available only for use in providing equitable allotments for other farms owned or purchased by the displaced owner. During the period of eligibility for establishing or increasing allotments for a displaced owner under this section, acreage allotments shall be established for the agency-acquired farm in accordance with applicable commodity regulations for other farms, and for purposes of establishing future allotments, such allotments shall be considered to have been fully planted.

(i) *Owners displaced prior to August 28, 1958.* An allotment which is eligible for pooling by an owner displaced prior to August 28, 1958, under the provisions of paragraphs (a), (b), and (c) of this section, shall be placed in an allotment pool if the displaced owner timely files the prescribed application form designating the other farm(s) owned for which a transfer of allotment is being requested for the succeeding year. Such application for the pooling of an allotment shall become active as of the date of filing with the county committee; however, an application must be filed on or before May 1 in the case of wheat and on or before November 1 in the case of cotton, peanuts, rice, and tobacco for the transfer to become effective for the crop harvested in the succeeding year, except that if the county committee has actual knowledge of the displacement prior to the final date for filing, the allotment shall be transferred to the pool as if the application were timely filed. The pooling and transfer provisions of this subdivision shall not be applicable after August 28, 1961.

(ii) *Owners displaced on or after August 28, 1958.* The allotment(s) eligible for pooling by an owner displaced on

or after August 28, 1958, shall be placed in an allotment pool upon the displacement of the owner.

(2) *Transfer of allotment from the pool.* Upon application by the displaced owner in writing to the county committee of the county in which the farm which is to receive allotment from the pool is located before August 29, 1961, or within three years after such owner is displaced, whichever is later, the county committee shall determine an allotment or increase of allotment to be transferred from the pool for such farm. The allotment to be transferred for a commodity shall be no greater than an amount required to establish an allotment comparable with allotments determined for other farms in the same area which are similar except for the past acreage of the commodity, taking into consideration the land, labor and equipment available for the production of the commodity, crop-rotation practices, and the soil and other physical factors affecting the production of the commodity: *Provided, however,* That the acreage transferred from the pool shall not exceed the allotment most recently established for the farm acquired from the applicant and placed in the pool. When all or a part of the allotment placed in the pool is transferred and used to establish or increase the allotment for other farms owned or purchased by the displaced owner, all or the proportionate part of the past acreage history for the farm from which the owner was displaced shall be transferred to, and considered for purposes of future allotments, to have been planted on the farm for which an allotment is established or increased under this section. If only a part of the available allotment is transferred from the pool, the remaining part of the allotment and past acreage history shall remain in the pool for transfer to other farms of the displaced owner until all such allotment acreage has been transferred or until the period of eligibility for establishing or increasing allotments under this section has expired.

(3) *Notice of displacement.* The owner of a farm acquired by an agency or the agency acquiring the farm

should notify the county committee within thirty days after the date of such acquisition of the farm of the expected date of displacement of the owner from such agency-acquired farm. Any owner who voluntarily relinquishes possession of land subsequent to its acquisition by an agency but prior to actual displacement shall be considered as having been displaced as of the date he voluntarily relinquished the land.

(4) *Date of displacement and leasing acquired land.* The term "date of displacement" with respect to any commodity shall be the date the owner voluntarily relinquishes his right to produce another crop of the commodity on the acquired farm or the date he is legally displaced. Legal displacement occurs when the displaced owner no longer retains the right to possession of the land on the acquired farm as owner or under a lease with the acquiring agency which follows immediately after his possession as owner: *Provided,* That if a former owner has been displaced prior to April 9, 1960, and (i) such former owner enters into a lease with respect to all or part of the land formerly owned by him with the acquiring agency prior to April 9, 1962, (ii) none of the allotment pooled for the acquired farm has been transferred from the allotment pool, and (iii) the former owner files a copy of the lease with the county office of the county in which the acquired farm is located as soon as practicable after execution but in any event prior to April 9, 1962, displacement with respect to the formerly owned land covered by such lease shall be deemed not to have occurred. In cases covered by this proviso, the pooled allotment or portion thereof, as applicable, shall be retransferred from the allotment pool to the acquired farm. The term "lease" as used herein means written leases and other written operating agreements.

(e) *Where only part of a farm is acquired by an agency or only part of an acquired farm is leased by the former owner.* Where only part of a farm is acquired by an agency or only part of an acquired farm is leased by the

former owner, that part of the farm which is acquired by an agency or which is acquired and then leased from the acquiring agency by the former owner and that part of the farm which is not so acquired or leased shall be constituted separately in accordance with §§ 719.1 to 719.11: *Provided, however,* That no reconstitution shall be made in any case where the cropland acquired by an agency for non-farming purposes is less than fifteen percent of the total cropland on the farm, in which case, that portion of the allotment, history acreages, and other pertinent data attributable to that part of the farm so acquired shall be transferred to that part of the farm not so acquired. This fifteen percent provision shall not apply to the leasing of acquired land by the former owner.

[Paragraph (e) amended, Amdt. 8, 25 F.R. 4129, May 10, 1960]

(f) *Procedure in the event of death of owner or joint ownership.* The owner of a farm acquired by an agency may, at any time before or after such acquisition, notify the county committee in writing of his designation of a beneficiary to make application for transfer of allotment to a farm owned by the beneficiary under paragraph (d)(2) of this section in the event of death of the owner prior to a transfer of allotment thereunder and after acquisition by the agency. Such beneficiary shall be limited to the owner's surviving spouse, mother, father, brothers, sisters, or children. The owner may change his designation of beneficiary at any time by giving written notice to the county committee. In case of death of a displaced owner, who owns or has acquired another farm, prior to application for transfer of allotment under paragraph (d)(2) of this section and where no designation of beneficiary was made by the owner under this paragraph, application may be made by the person to succeeds to the owner's interest by reason of the owner's death in any such farm owned by such deceased owner at the time of his death.

Where a farm acquired by an agency is jointly owned, each joint owner may apply for transfer of allotment to the extent of and in proportion to such joint owner's interest in such agency-acquired farm.

[Amdt. 1, 23 F.R. 7693, Oct. 4, 1958, as amended by Amdt. 4, 24 F.R. 2643, Apr. 7, 1959]

CODIFICATION: Paragraph (d) was amended as follows:

1. Subparagraph (1)(i) was amended, Amdt. 7, 25 F.R. 2881, Apr. 6, 1960.

2. Subparagraph (4) was added, Amdt. 5, 25 F.R. 1069, Feb. 6, 1960, and amended by Amdt. 9, 25 F.R. 5445, June 17, 1960.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 687

FRED CHANDLER, SR., ET AL., PETITIONERS

v.

W. LEWIS DAVID, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1)[1] is reported at 350 F. 2d 669. The opinion of the district court (Pet. App. A21) is reported at 219 F. Supp. 801.

JURISDICTION

The judgment of the court of appeals was entered on July 28, 1965 (Pet. App. A19). The petition for a writ of certiorari was filed on October 21, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "Pet. App." references are to the separately bound appendix to the petition.

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QUESTION PRESENTED

Whether the regulation promulgated by the Secretary of Agriculture in implementation of 7 U.S.C. 1378(a) is valid.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. 1281, *et seq.*, and of the regulations promulgated by the Secretary of Agriculture in implementation thereof, 7 C.F.R. 719.12, are set forth in Pet. App. A117–A131.

STATEMENT

In order to limit the supply of cotton, the Agricultural Adjustment Act of 1938 provides for the determination and enforcement of annual acreage allotments (*i.e.*, quotas) for the nation, and for apportioning those allotments among States, counties and individual farms. 7 U.S.C. 1341–1350. Under this scheme, acreage allotments are assigned and pertain to individual farms—not individual farmers (see 7 U.S.C. 1344 (f)); with minor exceptions, the Act does not authorize the transfer of a farm's allotment save by transfer of the land to which the allotment is assigned. One such exception is the subject of this case: Under 7 U.S.C. 1378(a), if the land to which an allotment has been assigned is taken by eminent domain, the allotment is placed in an "allotment pool," where it is available "only for use in providing allotments for other farms owned by the owner so displaced."

The Agricultural Adjustment Act authorizes the Secretary of Agriculture to "prescribe such regula-

tions as are necessary" for its enforcement. 7 U.S.C. 1375(b). Pursuant to this authority, on February 14, 1961, the Administrator of the Commodity Stabilization Service promulgated Amendment 11 to 7 C.F.R. 719.12 (Pet. App. A121),[2] prescribing the procedure for, and various limitations upon, the withdrawal of allotments from the pool. Amendment 11—the regulation here challenged—recites that its purpose is to make "the procedures for the transfer of allotment from the pool under 7 U.S.C. 1378 more effective in preventing the sale of allotments from the pool or the transfer of allotments from the pool for the benefit of some person other than the displaced owner." To that end, it requires the county committee to determine (Pet. App. A122)

> * * * whether the transaction by which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner.

To facilitate that determination, the regulation requires that an application for transfer contain a certification by the applicant

> * * * that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself.

[2] The substance of this regulation is now incorporated in 7 CFR 719.11(f) (1964).

The regulation further requires that the applicant appear before the county committee to answer pertinent questions and produce for inspection all pertinent documents. Finally, it provides that where the county committee authorizes the transfer of an allotment and it is later discovered that the transfer was obtained by misrepresentation, the allotment shall be returned to the pool.

Petitioners Fred Chandler, Sr., and Fred Chandler, Jr., in 1960 owned land in Culberson County, Texas, suitable for cotton farming but for which they had no cotton acreage allotments. The Chandlers sought out and entered into negotiations with fifteen displaced farmers (fourteen of whom are also petitioners) whose farms in Oklahoma had been condemned by the Department of the Interior in 1958 and who, accordingly, had acreage allotments in the eminent domain pool. As a result of these negotiations the Chandlers and the displaced farmers entered into a sale and lease-back agreement under which the Chandlers conveyed to each farmer sufficient land in Culberson County to support that farmer's pooled allotment, and the farmer, in return, assumed an indebtedness of $35 per acre (which the Chandlers owed their grantors), agreed to pay clearing costs of $20 per acre, and leased the land back to the Chandlers for a twenty-year term at a total rental of $100 to $125 per acre.

The displaced farmers applied for the transfer of their pooled acreage allotments to the Texas farms (R. 46, 613), and their applications were approved by the county and State ASC committees (R. 46, 534).

But subsequent investigation revealed that the displaced farmers and the Chandlers had misrepresented the purpose of the transfers; that "[t]he transactions by which the applicants obtained deeds to the farms in question were not for the purpose of re-establishing the farming operations of the applicants as displaced owners but were schemes and devices to sell the allotments and to transfer the allotments for the benefit of Fred Chandler, Sr., and Fred Chandler, Jr." (R. 620).[3] Accordingly, the transfers were cancelled (R. 47–48). Petitioners brought this action against the responsible ASC officials challenging the cancellation. The district court held that Amendment 11 was valid and was properly applied to cancel the transfers. The court of appeals affirmed.

ARGUMENT

Petitioners do not now contend that the transfers in question complied with the requirements of Amendment 11. The only question, accordingly, is whether the regulation is valid. We submit that the court below was clearly correct in concluding that it is. The only other court of appeals to have considered the question reached the same conclusion. *Morrow* v. *Clayton,* 326 F. 2d 36 (C.A. 10). Further review is not warranted.

An acreage allotment runs with the land and cannot, in general, be transferred apart from a transfer of the land to which it pertains. Where, however, a farmer

[3] The evidence in support of this conclusion is summarized in the court of appeals' opinion. See Pet. App. A15–A17.

loses his land by eminent domain, 7 U.S.C. 1378(a) permits the transfer of the allotment pertaining to the condemned land—but not to another farmer or any other person; only to "other farms owned by" the displaced farmer. The reason for this provision lies in the structure of the acreage allotment system. An acreage allotment is a form of quota. Without an allotment, no crop covered by the quota provisions of the Agricultural Adjustment Act may be grown. Hence, when land under an allotment is taken by eminent domain, the displaced farmer cannot resume farming the crops he farmed on his former lands simply by purchasing new farmland with the proceeds of the condemnation award, but must somehow obtain land subject to the same allotments—unless he can, as it were, take his old allotments with him to the new land. The sole purpose of Section 1378(a) is to facilitate the resumption or continuation of farming by farmers displaced by eminent domain takings by permitting them to do just that. See 88 Cong. Rec. 730.[4]

Amendment 11 properly implements this statutory purpose by defining the transfers permitted by Section 1378(a) as limited to those intended in good faith to enable the displaced farmer to re-establish farming operations at a different site, thereby excluding transfers for the benefit of other persons; and by establishing procedures for ensuring that the statutory

[4] Compare 7 U.S.C. 1344(n), a provision similar to Section 1378(a), applicable to lands where natural disaster has prevented the planting of the crop.

requirements are observed. The regulation thus does no more than prevent displaced farmers from resorting to sham arrangements—such as the sale and lease-back arrangement with the Chandlers here—designed to defeat the limitations of the statute and enable the transfer of acreage allotments not to farms owned by the displaced farmers but to other farmers. Since the regulation is surely not "unreasonable and plainly inconsistent with" the statute, it must stand. *Commissioner* v. *South Texas Lumber Co.*, 333 U.S. 496, 501.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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